THE NEW ERA

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BEING A

SURVEY OF INDUSTRIAL ACCIDENT COMPENSATION LEGISLATION OF EUROPE AND UNITED STATES, WITH ESPECIAL REFERENCE TO THE RHODE ISLAND ACT

BY

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TO

MY MOTHER

THIS

LITTLE VOLUME

IS AFFECTIONATELY

INSCRIBED

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FOREWORD

A while ago the writer was called upon to consider, in certain of its aspects, the industrial accident compensation legislation in force in this state. It is a remarkable fact that this species of legislation, although of great moment in the economic history of our country, received, until lately, little consideration, due apparently to the fact that its importance was neither contemplated nor appreciated.

There has been a noticeable paucity here of literature relating to the experience of foreign countries in this zone of economic reform, notwithstanding the fact that sound legislation of this character must necessarily be referable to the attitude of Continental Europe in connection with its compensation laws, in the molding of which the greatest economic thought of the world participated.

The observations contained herein are not offered as a historical review nor in the nature of a complete statistical compilation. The purpose is to trace, briefly, legislation relative to this subject which, after trial, has been found sound and beneficial.

Aside entirely from the question of humanitarianism, and solely from the viewpoint of sound economics, we need indulge in no flight of imagination to presume to assert that just legislation along this line not only elevates both economically and morally the lot of the employee, but is advantageous, in the end, to the employer.

We are not unmindful that any suggestion looking towards broadening the scope of compensation laws has

been viewed with alarm by the industries, being regarded, seemingly, as something that may unfavorably affect them; but we venture to suggest that the history of this class of legislation and the experience of the countries in which it has long been in force, prove that those fears are entirely chimerical. It has been demonstrated that the fashioning of compensation laws so as to give broad, substantial protection to the employee has not only brought happiness and contentment to him, but has invariably resulted in greater success and prosperity for the industry.

Our own state, never backward in its desire to make its people contented and happy, will, we trust, be a leader in this worthy work of fashioning and adopting true, just and economically sound compensation legislation. The start has already been made but there is much yet to be done before the work is finished. If this little volume serves to aid in bring about this desired result its object will have been attained. A small portion of this work appeared in two articles by the writer in the *Quarterly Bulletin of the State Board of Health* and *The Rhode Island Medical Journal,* respectively.

An appendix summarizing the compensation laws of the leading American states has been added to this work for comparative study.

Francis I. McCanna.

Providence, Rhode Island
March, 1917.

CHAPTER I

Until recently the matter of social insurance was little discussed in the United States although for years this subject has been receiving great attention in almost every country in Europe. There has been an awakening to the importance of this branch of economic science with the result that during the last half dozen years industrial accident laws have been placed upon the statute books of most of the American states and territories.

Reflecting upon this changed condition, we wonder, not at the new legislation itself, but why it has been delayed so long. Why were we more than a quarter of a century behind the best thought of Europe in such important social legislation as providing accident insurance for the working members of the community who are unable to look after themselves? This is but one of the many branches of what is properly termed social insurance and is deemed by many the most important. The other divisions of social insurance embrace health, old age, maternity, burial, widow and orphan insurance. Some of these forms of relief are already in force in several of the European countries.

The introduction of the principle of definite and certain compensation in industrial accident cases in-

to this country, while tardy, is nevertheless epochal in our economic history, and is a sign of the progress of the times. It is the recognition of a principle which is bound to grow and expand as its worth becomes known and established. It is interesting to observe how this great right sustained by every consideration of humanitarianism and justice fought its way as a part of the industrial life of the country. Many of the state compensation acts are crudities and give manifest evidence of lack of proper consideration upon the part of the draftsmen. They serve, however, the purpose of placing upon the statute books sound economic legislation and for this, if for nothing else, the framers of the acts, as well as those who approved of them, are to be thanked.

While the principle of compulsory compensation received its first recognition by Germany, when the famous compensation act of 1884, sponsored by Bismarck, was enacted, the idea of compensation in its relation to social insurance was in actual practice prior to that time; indeed it has been claimed that it dates back to the early centuries.

By this is meant that coincidental with the rise of the wage earning class there came into being, established by that class, different forms of mutual aid; and it is asserted that these organizations formed substantial ground work for the later state systems of social insurance first promulgated in Germany.

We hear much of the German system in discussions relative to industrial accident legislation. This system typifies the compulsory,state controlled, compensation law. Later acts embracing this idea are referred to as being patterned after the German system, as contrasted with the other schemes of compensation, and usually referred to as embodying the English idea.

Austria passed a compensation act in 1887, Hungary, 1891; Norway, 1894; Finland, 1895; Great Britain, 1897; France, Italy and Denmark, 1898; Spain, New Zealand and South Australia, Luxemburg and British Columbia, 1902; Russia and Belgium, 1903; Cape of Good Hope and Queensland, 1905; Mexico, 1906; Transvaal, 1907; Alberta, Bulgaria and New Foundland, 1908; Quebec, 1909; Servia and Nova Scotia and Manitoba, 1910; Switzerland and Peru, 1911, and Roumania, 1912.

The enactment of this character of legislation in Europe came after a bitter struggle which extended through a period of years. For instance, we find that the subject was constantly under discussion in France for a period of over fifteen years before an accident compensation law was placed upon the statute books of that country. In Italy, twenty years of struggle preceded the adoption of the legislation. In Sweden and Norway, from ten to fifteen years of agitation were necessary to secure the adoption of the principle, and in Belgium and Russia compensation acts were presented to the govern-

ing bodies years before they were favorably acted upon. The Swiss act, which embodies probably the most advanced form of compensation legislation, was made a law after a long and bitter struggle in the course of which the act as first submitted was rejected by a popular vote. Then the present law was framed and passed. Thus when we are considering the American compensation legislation to which we shall later refer, we must bear in mind that the compensation principle is not an experiment since we have the experience of the various European countries to which we may refer in considering the wisdom of the various enactments.

Prior to the adoption of accident compensation legislation rights and remedies in cases of personal injuries in Continental Europe were for the most part governed by the Code Napoleon. In England and her colonies the English common law prevailed. The right to damages under the Code Napoleon was based upon the idea of fault. If the employer was negligent it was deemed proper that he should be made to pay damages. If the employee was negligent, or if the accident was the result of what is known as "trade risks" compensation was denied.

Under the common law of England the employer's duty to his employee comprehended the use of reasonable care for the safety of the employee. If the injury to the workman occurred wholly through fault or neglect on the part of the employer, the former might recover such damages

as he could show he had sustained by reason of the injury. The common law, however, holds the master liable only when the injury is the direct result of negligence or carelessness in the conduct of the employer toward the employee, recovery by the employee being barred in case the employee be negligent in such a way as to contribute to the injury, or if the injury be brought about by the negligence or fault of a fellow servant or if it be the result of the hazard of the employment assumed by the employee. It will be noted that under this system of jurisprudence the right of an employee to recover damages for personal injuries sustained by him in course of his employment is limited to cases wherein he is able to show that his injuries were sustained through neglect or fault upon part of his employer.

The employer earnestly argued that the safeguarding of his industry required that the employee should be called upon to exercise due care for his own safety, and that to hold the employer liable except in case he be negligent would open the door to a flood of claims against which the employer could not protect himself and spelled ruin for the industry.

As opposed to this attitude it was shown that there was statistical evidence that most accidents were due either to the fault of the employee, or fault upon part of a fellow servant, or were the result of hazards of the employment, with the con-

sequence that in the vast majority of cases of personal injuries the employee was without remedy, and in debatable cases the employee was at a disadvantage in proving liability since he was unequipped to properly prosecute his action. In France it was estimated that in only one case out of ten involving this class of litigation did the litigant succeed in obtaining damages. The rest of the serious accident cases usually resulting in the injured becoming charges upon their friends, or objects of charity to be cared for by the community. The hardships of this situation could not be overlooked and as time went on employers gave way slightly under great pressure, and we find as a step in the way of ameliorating the condition of the workman, many of the European countries enacting laws tending to make easier the lot of the injured litigant. One of the first reforms was to shift the burden of proving negligence from the employee to the employer.

When compensation legislation was first broached in Europe there was a great outburst in opposition to it. It was claimed that such legislation was economically unsound and would shake the industries of Europe to their foundations. Every argument of which the great opposition minds of Europe could conceive was urged against the idea. It was contended that if the principle of fault be eliminated the entire industrial structure would collapse.

In support of this legislation it was pointed out that far from working destruction to the industry the compensation idea when enacted into law would be of benefit to the industry; that what were termed industrial accidents were not accidents at all but were incidents of production. It was shown that in the various lines of employment the average in the number and kinds of accidents could be ascertained without any trouble and that the financial loss to the workman by reason thereof should be made a charge upon the industry and should be figured in the cost of production, just as depreciation in buildings, machinery, tools and other personal property employed in the process of manufacture.

Moreover, in its social aspect, it was pointed out that in many cases of industrial accidents there was no liability on the part of the employer to respond in damages and the effect was the pauperization of the workmen and the imposition upon the community of a burden which ought to have been borne by the industry. Moreover, and of vital interest to society, was the fact that this condition resulted in making the workman's family an object of charity, and the presence of want many times affected the morality and standard of life of the members of the household. Furthemore, even in cases where damages were recovered, it appeared that but a small part of the amount reached the workman. It was also shown that the expense to the employer of defending accident suits was large and

the cost to the community of sustaining this class of litigation was likewise large and unnecessary. It was finally shown that the employer would be relieved from the necessity of giving attention to law suits and the possibility of large verdicts being obtained against him, thus obviating an immense amount of worry incident to such litigation. An additional argument was that the principle would practically eliminate the antagonism between the employee and employer engendered through accident litigation thus creating a more friendly spirit in the ranks and making for the prosperity and success of the industry. But in spite of all of this it took a long time to bring the European Solons to the adoption of the compensation idea.

CHAPTER II

In 1881, the workmen's compensation law was introduced into the Reichstag in Germany but failed of adoption. Then came the famous message to the Reichstag by Emperor William I, recommending legislation requiring employers in certain industries to compensate injured workmen without regard to the cause of the injury. In his message the Emperor recommended the enactment of a bill for the insurance of workmen against industrial accidents, industrial sick relief insurance, old age and invalidity insurance. In answer to this message the sickness law was enacted by Germany in 1883, the accident compensation law followed in 1884, and in 1889 old age and invalidity laws were enacted.

In its early days in Europe, the compensation idea was considered in the light of an experiment and was introduced with the thought of trying it out, with a certain timid belief that it would prove beneficial. The provisions of the early acts betray a tendency to limit the scope of the law, but as time went on the great worth of the compensation principle became apparent and the provisions of the

earlier laws were quickly extended and broadened, and it may be truly asserted that every country that has adopted the act has by constant amendments endeavored to broaden its provisions that the law might be made more efficacious and beneficial. No country to the writer's knowledge has attempted to modify its compensation legislation so as to curtail in anyway any of the benefits to be derived under it.

Having noted the developments of European compensation legislation we will briefly refer to compensation laws in vogue in the principal European countries.

The German law provides for compulsory insurance by the employer. He pays a premium based upon the annual payroll, to the insurance fund, out of which the employee is paid for his injuries and sickness. The fund is managed by a mutual association under the direct supervision of the German Government. Compensation is allowed for accidental injuries received in course of the employment, for disability extending for more than three days unless caused intentionally. Medical and surgical treatment is provided for ninety-one days, and from the third to the ninety-first day benefits are paid out of the sick fund to which the employers contribute one-third, and the employees two-thirds; from the 28th day to the 91st day payments are increased one-third, and the expense to the employer after the ninety-first day, and in case of death from the in-

jury, is borne by the employers' association. In case of disability free medical and surgical treatment is provided for the first thirteen weeks from the sick benefit fund and after that period by the employers' association. The allowance for temporary or permanent disability ranges from 50 per cent. of the daily wages which is paid during the first few weeks, to 66 2-3 per cent. of the average earnings which is paid after the thirteenth week, and in certain cases, for example, total disability, necessitating the services of an attendant, the payments may be increased to 100 per cent. of the yearly wages of the injured workman. Disputes are settled by a board of arbitrators composed of one government official, two representatives of the workman and two representatives of the employer.

In France, compensation is allowed to all workmen who sustain injuries arising out of the employment where the incapacity continues more than four days unless the injuries were intentionally produced by the employee. The employer bears the entire expense of compensation. The injured employee is allowed medical and surgical attendance and has the right to select his own physician. In case of permanent disability the workman is allowed 66 2-3 per cent. of his annual wages and in case of partial disability one-half the loss of earnings. In case of temporary disability the workman receives 50 per cent. of his daily wages beginning with the third day unless the disability lasts more than ten

days in which case the payment becomes due from the first day.

In case of the decease of the injured workman pensions are allowed his dependent heirs not exceeding 60 per cent. of the annual wages of the deceased as follows: Widows 20 per cent. until death or remarriage, with a provision for a lump sum payment in the latter case. Children under sixteen years of age, if no parent survives, 15 per cent. if there is but one child, 25 per cent. if there are two children, 35 per cent. if there are three children, 40 per cent. if there are four or more children. Each child under sixteen years of age, if neither parent survives, 20 per cent. Each ascendant and each descendant under sixteen years of age dependent upon deceased, if no widow or children survive 10 per cent., the aggregate not to exceed thirty per cent.

For temporary disability, fifty per cent. of the daily wages beginning with the fourth day; but if the disability lasts more than ten days payments become due from the first day.

In England the compensation act covers all employments and the entire expense of compensation is borne by the employer. Where total or partial incapacity results from the injury a weekly payment during the disability period not exceeding 50 per cent. of the average weekly earnings during

the previous year is allowed. If the incapacity lasts less than two weeks the employer need not compensate for the first week.

In Holland, all injuries causing disability for over two days are compensated unless brought on intentionally. All classes of employees are compensated and the entire expense is borne by the employer. Medical and surgical treatment, so long as same may be required, is allowed the workman at the expense of the employer and the workman may select his own physician. Compensation equal to 70 per cent. of the workman's daily earnings is allowed him for the first forty-three days of the injury, and after that time a pension in the same amount is allowed him for total disability and a smaller pension regulated by the loss of earning power for partial disability.

The Holland act also provides for compensation for all injuries caused by any accident occuring in course of the employment if disability therefrom extends over two days, unless brought on intentionally. If the injury was the result of intoxication one-half the regular compensation is allowed but if death results in such case no compensation is paid. The compensation in all cases is borne by the employer. In case of death an amount equal to 60 per cent. of the earnings of the deceased is distributed as follows:

To the widow 30 per cent. of said earnings until

death or remarriage; to each child under the age of sixteen years 15 per cent. if one of the parents be living and 20 per cent. if both be dead.

Provision is made in certain contingencies for dependent parents, grandparents, orphan grandchildren, and dependent parents-in-law. Free medical and surgical treatment is provided and the employee has the right to nominate the physician. The compensation allowance is 70 per cent. of the daily earnings during total disability and the allowance for partial disability is proportional to the loss of earning power. A state insurance fund is established to guarantee payment of the compensation.

The Norwegian law compensates all injuries disabling the employee for more than four weeks, and covers practically all lines of industry. Free medical and surgical treatment is allowed after the fourth week. In case of total disability an allowance equal to 60 per cent. of the wages of the injured person is made.

No one can say with certainty at just what period of time the compensation idea became a matter of individual thought in the economic life of our country but we do know that this great principle of social justice having proved its worth in foreign climes pressed onward to our shores and demanded and gained recognition. Its adoption was as inevitable as the seasons of the year, as well try to stop the mighty waves of the ocean as to retard its progress.

A principle is not necessarily a right one, that is to say, sound, because a body of individuals or a great majority of the people may decree it so. We can recall numerous instances where something was adopted as being the right thing at the time, only to be discarded later because it did not work well. But that thing or principle is right which through its own merit forces recognition as a valuable factor in the life of the times.

The Federal Constitution declares that our government was founded to establish justice, insure domestic tranquillity and promote the general welfare of our people. A paramount idea in the minds of the founders of our government and embodied by them in that immortal document was the right of every man to live and live happily.

Good government means that system which truly promotes justice and establishes tranquillity among its people. It is that system which protects the weak against the strong, and which recognizes that there are limits to the "survival of the fittest" doctrine. By this reference to the weak, we do not mean that person who through frailty has to be cared for by others; that one is a proper object for charity. We refer to the condition brought about when competition is free and every man may engage in an economic fight unfettered by any rules of conduct, that condition where everyone striving for the promotion of his own interests wholly disregards the welfare of his fellowmen, as well as that of the

state; in other words, we use the words sound and unsound in an economic sense.

It is the duty of the commonwealth to be strong because a state can live only so long as its government is strong; when it becomes weak it decays and vanishes just as did ancient Rome. When the conduct of any part of the inhabitants of the state is thought to be detrimental to the state, it is then time for the government to step in and regulate such conduct. When any class of society in the pursuit of its own interests disregards the economic rights of the other classes in the community, the government is bound to announce that the worth of a man to the community shall be estimated not in proportion to the wealth he accumulates but in the ratio in which he contributes to the general welfare of the community.

CHAPTER III

If the state finds that a great part of its population is struggling under economic burdens too heavy for it to bear, it must ascertain wherein the defect lies that it may be remedied. It must require every individual to so conduct himself as to make for economic soundness in the life of the state. If the strong are oppressing the weak it must bid the former hold themselves in check; if on the other hand a portion of the citizenship is losing its grip upon itself the state must come to its aid and give it assistance. It must regulate any conduct upon the part of the individual which in anyway tends to weaken the structure of the state for only by so doing can a government survive.

The perpetuity of the state bespeaks social justice and if we love our republic and would have it survive, we should harken to the words of a noted writer who in speaking of the lessons of history says: "First, it is a voice forever sounding across the centuries the laws of right and wrong. Opinions alter, manners change, creeds rise and fall but the moral law is written on the tablets of eternity. For every false word or unrighteous deed, for cruelty and oppression, for lust or vanity, the price has to

be paid at last, not always by the chief offender but paid by someone. Justice and truth alone endure and live. Injustice and falsehood may be long lived, but doomsday comes at last to them in French revolutions and other terrible ways."

That our republic has not heretofore played its part in extending to the industrial classes the protection and care to which their condition in life entitled them in cases of industrial accidents becomes very evident when we consider the situation of those classes prior to the enactment of the compensation law.

Under the rules of the common law which we inherited from England, the obligation of the employer to respond to the workman for damages where personal injuries are sustained by the latter is based upon negligence or fault upon the part of the employer unaccompanied by any negligence upon the part of the workman. The employer is not held to be an insurer and is only required to exercise such ordinary and reasonable care and caution for the safety of his employees as the nature and dangers of the business permit and require; but the negligence of the employer must be the proximate cause of the injury. For example, it is the positive duty of the employer to furnish the employee with a safe place in which to work and with proper tools with which to perform the work. In accepting an employment, however, the employee is held, under the common law, to have assumed all the ordinary

and usual risks and perils incident to the employment, whether it be dangerous or not, and also all risks of which he knows or of which he might know by the exercise of reasonable care upon his part, unless there be some agreement to the contrary. The effect of this doctrine, more than anything else, gave rise to the later compensation laws. The rule of assumption of risk was a most harsh one. It proceeded upon the theory that the workman was a free agent to accept or reject a position at his pleasure, that if he accepted a job which he knew was dangerous he tacitly agreed to assume the risks of injury, otherwise he should have refused the position.

Moreover if, after he engaged in the work and the place developed dangers, he is assumed to have accepted the dangers because of retaining his position. In this line of reasoning the fact is lost sight of that the average workman is far from being a free agent, that often-times he is forced by keen competition in his field of labor and at other times by the stress of circumstances to accept hazardous work, when if he were free to choose he would reject it. To say that such a man must be held to have voluntarily agreed to have assumed the risks and injuries incidental to the employment is unjust; it is in truth taking advantage of the laborer's helplessness.

In some jurisdictions it is held that even though the employee contributes to the injury he may recover for the injury provided the negligence of his

employer be gross. This doctrine of comparative negligence does not, however, apply when a risk has been voluntarily assumed by the servant.

Furthermore, under the common law the employer is not liable for injuries to the servant caused by the negligence of a fellow servant engaged in the same general business when the master has furnished proper means for carrying on the work and has used due care in his selection of servants. The leading case establishing this doctrine was decided in England in 1837.[1] This ruling was followed by the supreme court of South Carolina in a case decided four years later.[2] Then came the famous decision written by Chief Justice Shaw of the supreme court of Massachusetts affirming the doctrine of the two earlier cases.[3] As Chief Justice Shaw was, perhaps, one of the greatest jurists America has ever produced the fellow servant rule was soon adopted as sound legal doctrine by practically all the courts throughout our country.

In giving his reasons for this doctrine, the Chief Justice says:

> "We are not aware of any principle which should except the perils arising from the carelessness and negligence of those who are in the same employment. These are perils which the servant is as likely to know,

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[1] Feltham vs. England L. R. 2 Q. B. 33.
[2] Murray vs. So. Carolina R. R. Co. 1 McMull (S. C.) 385.
[3] Farwell vs. Boston & Maine R. Corporation 4 Metc. (Mass.) 49.

and against which he can as effectually guard, as the master. They are perils incident to the service, and which can be as distinctly foreseen and provided for in the rate of compensation as any others. * * * Where several persons are employed in the conduct of one common enterprise or undertaking, and the safety of each depends much on the care and skill with which each one shall perform his appropriate duty, each is an observer of the conduct of the others, can give notice of any misconduct, incapacity or neglect of duty, and leave the service, if the common employer will not take such precautions, and employ such agents as the safety of the whole party may require. By these means, safety of each will be much more effectually secured, than could be done by a resort to the common employer for indemnity in case of loss by the negligence of each other. Regarding it in this light, it is the ordinary case of one sustaining an injury in the course of his own employment, in which he must bear the loss himself, or seek his remedy, if he have any, against the actual wrong-doer."

In that case the court held that a railroad company was not liable for injuries sustained by an engineer of a train, caused by the negligence of a switchman in charge of the operation of the switch.

Another court in laying down the same rule says:

"The rule had its origin in the idea that the employee has the means of knowing just as well as the employer all the ordinary risks incident to the service in which he is about to engage and that these, including the perils that might arise from the negligence of other servants in the same business, enter into the contemplation of the parties in making the contract; on

> account of which the law implies that the servant or employee has insisted upon a rate of compensation which would indemnify him for the hazards of the employment. And again the law supposes that the relation which the several employees sustain to each other and the business in which they are engaged, would enable them better to guard against such risks and accidents than could the employer. Besides the moral effect of devolving these risks upon the employees themselves would be to induce a greater degree of caution, prudence and fidelity than would in all probability be otherwise exercised by them."

In most jurisdictions fellow servants were held to embrace all who served the same master and who were under the same general control. For years the industrial classes in this country struggled under the oppressive rules of the common law, resulting, as we have heretofore seen, in the denial of relief in over two-thirds of industrial accident cases and the consequence was most unsatisfactory both to the employer and the employee. It has been estimated that about thirty-four thousand persons are killed and over a million and a half are injured each year in the industrial life of the United States.

The common law rules governing negligent actions were suited to the conditions existing at the times the rules were established. At that time industries were few and were usually operated under the personal supervision of the employer. The number of workmen was small and the

workmen were usually in daily contact with each other. In the early days much of the work was done by hand, tools being the principal medium of labor. There was nothing involved about the ways and workings of the establishment and the individual workman was usually as well informed as the employer in relation to matters concerning the employment. Indeed sometimes the employer and employee were found working side by side in the promotion of the affairs of the industry.

But "times change and men change with them." The modest factory became an immense industry. The old industrial employer became a powerful corporation and the operation and supervision of the work passed to a board of directors which operated through its numerous agents.

The simple hand tools were replaced by numerous intricate high powered machines, driven by steam and electricity. The carrying on of the work of such vast enterprise required the services of thousands of workmen embracing various nationalities, hardly any one of whom was acquainted with the other.

With this great change in the character of the industry came correspondingly great increases in the death and damage toll among the workmen. But the old legal rules governing, or rather, preventing, recovery by the injured workman continued in force and it is no exaggeration to say that it was only in the exceptional case that the injured workman succeeded in recovering damages.

With the passing of the simple hand tool and the installation of high powered machinery it would be absurd to contend that an inexperienced workman impliedly agreed to assume the risks of the employment, when only the most expert could understand and appreciate the intricate machinery in use in the establishment, nor could it sensibly be argued that the workman was paid commensurately with the risk assumed. The window-washer hanging to a rope at the side of a skyscraper building has a hazardous job, but will it be contended that his pay is at all comparable to that of the expert engraver who sits in comfort at his desk in the prosecution of his work?

CHAPTER IV

We noted above that the injured workman was debarred from recovering damages, (a) if the accident resulted from the hazards of the employment, or (b) if the workman was negligent, or (c) if the accident was due to the negligence of a fellow servant.

Let us see what proportion of industrial accidents involves any of the above elements. Perhaps the most trustworthy figures in this respect are those that were made by the German government, as it is generally conceded that Germany is best equipped of any of the countries to furnish statistical data in this class of cases.

In the accident statistics published by that government the causes of accidents are set forth as follows: Due to fault of the employer 16.81 per cent.; due to fault of employee 28.89 per cent.; due to joint fault of both 4.66 per cent.; due to negligence of fellow servants 5.28 per cent.; due to act of God 1.31 per cent.; due to fault of no one 40.05 per cent. An Ohio commission placed the number of accidents resulting from the hazards of the employment at over fifty per cent. and said that only

thirty per cent. of all industrial accidents was attributable to negligence of the employer.

According to the German statistics the employee can recover in only 16.81 per cent. of the cases, while in this country according to the Ohio estimate he has a right of recovery in only thirty per cent. of the cases.

In France it is estimated that in only ten cases out of every one hundred is there a right of recovery on the part of the employee for damages sustained. Moreover in cases where damages were obtained the expense of litigation was so large that only a part of the sum recovered went to the employee.

In one of the states out of a total sum of $351,200 paid in fatal industrial accident cases about one-half this amount was paid to 12 per cent. of the cases, the remainder of the sum was divided among the other 88 per cent.; 60 per cent. received from $50 to $500. The percentage of cases settled was 30 per cent.; the average amount this 30 per cent. recovered was $838.01; the average attorneys' fees out of this $838.01 was 24 per cent.; the widows who had to work 56 per cent.; the percentage of children who had to work 18; the reports of accident insurance companies for the year 1906-8 made to the New York Liability Commission showed that in only 12.64 per cent. of the injury cases was compensation paid. A New York commission in a recent report to the Legislature showed

that in 58.1 per cent. of the fatal industrial accident cases the employee was earning less than $16.00 per week, and 62 per cent. earning less than $15.00 per week; and of deaths resulting from industrial accidents in Erie County and Manhattan Borough 6 per cent. earned less than $9.00; 17.5 per cent. from $9 to $11; 36.5 per cent. from $12 to $15; 20.9 per cent. $16 to $20.99; 10 per cent. over $21.

The publication of statistics of this character caused thoughtful people to ponder and consider if something was not the trouble economically with our industrial system. It was apparent that hundreds of thousands of industrial accidents were occurring yearly and that in only a small fraction of the cases could damages be collected. It was evident that in the great majority of cases the burden was falling upon persons economically unable to bear it: the injured employee and his family. It was evident that since in half the fatal accident cases the workman was earning less than $16 per week, there was little opportunity to accumulate any surplus for the rainy day; that this could have been done only at the risk of a lowering of the standard of life, a thing to be avoided. It was also seen that the crippled employee would have less earning capacity when he returned to work than he had before the accident, thus, many times making it necessary for his wife and children to seek work in order to make both ends meet. More-

over in the case of the dependent workman who was totally disabled, he would become an object of charity to be cared for by the public.

The severity of these rules of the common law which precluded the injured employee from recovering damages in so many cases, was somewhat assuaged just before the introduction into this country of the compensation idea, but it seems strange to think that the American people did not realize the urgent need of such changes until within so short a period. The doctrine of comparative negligence was a judge made rule and was introduced first by the courts of some of the southern and western states in an attempt to relieve the employee from some of the burdens of the old doctrines. Later the legislatures of a few of the southern states made it a statutory law.

The fellow servant rule against which a great hue and cry had long been raised also came in for attention with the result that in many states it was abolished altogether, while in other states its scope was restricted. These attempts to do away with some of the old common law rules were more or less sporadic, and so far as the investigations of the writer have shown there does not appear to have been any very serious attempts to abolish any of the defences open to the employer under the common law, except as to the fellow servant doctrine.

Massachusetts, which was one of the first states to introduce the doctrine, abolished it in 1895; sixteen other states followed within the next few years, while other states contented themselves with modifications of the rule. The abolishment of the fellow servant doctrine was vigorously opposed by some of the employers on the ground that such legislation was in violation of the fourteenth amendment of the federal constitution. The Supreme Court of the United States, however, held the legislation valid.

About the same period we find the federal government enacting liability laws in substitution for the old common law remedies. In 1906 the federal government passed the so-called Employers' Liability Act. It applied only to common carriers and its effect was to abolish the fellow servant rule and establish the principle of comparative negligence. The law was declared unconstitutional by the federal Supreme Court. A second law somewhat similar to the first but overcoming the constitutional objections, was passed by Congress in 1908 and subsequently held valid in a decision by our highest legal tribunal.[1]

The attempts to modify the old common law rules, being a recognition of the inadequacy of those principles in their relation to modern industrial life, opened the way for the later accident compen-

[1] Second Employer Liability cases 223 U. S. 1.

sation legislation. Once the start in that direction was made it was not a very difficult matter to persuade public opinion to advance along the same road especially when the route was substantial and attractive.

It was perceived that the old liability laws were objectionable from the standpoint of the employee and employer alike; to the employee it was evident that a great number of accidents occurred without liability on the part of the employer to respond in damages; again when compensation was obtained it was usually small in comparison with the injury; and what was recovered came only after a long wait. Moreover, the expense incident to obtaining the settlement or verdict necessitated the expenditure of a substantial percentage of the amount obtained. Then there was always the chance of the workman losing his position through antagonizing the employer by bringing legal proceedings against him. On the other hand the employer had complained of the common law system because he was always subject in case of the happening of an industrial accident in his plant to suit for large damages, with its incidental expense and the possibility of a large verdict being rendered against him and of his business being affected. Then again litigation between the master and servant affected the morale of the industrial force, as it was a usual and, probably, natural thing for some of the employees to rally to the assistance of their injured

brother, in the prosecution of the case before the court, while others appeared for the master. Thus were created opposing factions in the ranks of the employees, with a consequent lack of incentive to best work upon part of the workmen in that place of employment. The removal of this cause of discord meant unity and contentment in the ranks and consequent betterment of the service.

Moreover the interests of the state were to be considered. When charitable agencies did not intervene in behalf of maimed and crippled workmen, the support of those persons was borne by their friends and relatives who could ill afford in many instances to assume this extra burden. Furthermore the great expense of litigation in connection with the prosecution of accident cases such as the expense of the courts and the juries was borne by the public at large. All these reasons and more, were adduced in opposition to the old common law procedure in industrial accident cases and in support of a system of fixed and certain compensation, and the placing of the burden upon those best able economically to bear it.

The advent of the compensation idea for industrial accidents in this country was coincidental with the realization that the old common law machinery was inadequate and should be discarded. The adoption of compensation acts was not preceded by the long discussion which accompanied their enactment in Europe. We had before us the result of the

discussions that had occurred among the great economic minds abroad, and the experience of the many foreign governments which had adopted compensation laws. A study of the proceedings and debates in connection with the various European conferences at which the compensation idea was discussed and recommendations made, shows that a proper compensation act must be based upon the idea of sure and definite compensation for every injury received in course of the employment irrespective of the element of negligence, thus abolishing the idea of fault.

It was seen that under present day industrial conditions, pitting the workmen against the industry, was creating a condition of economic inequality, to the great disadvantage of the employee. It was demonstrated that the average wage was too little to enable the employee to save any money and at the same time to properly support his family; that in case of sickness or death the average workman's family faced a condition of indigency. The number of workmen interested in mutual insurance associations was very small and the very man who needed such protection, the one employed in hazardous work, was denied same because of the high rate of insurance or the refusal of the insurance company to accept the risk. It was realized that the welfare of the employee and his family was of vital interest to the state as the producer is the chief asset of the state in time of peace or of war.

It was realized that when a workman is injured and deprived of his earning capacity the financial loss should not be put upon the one who is economically weak but should be borne by the industry to be paid ultimately by society in the character of the consumer. A careful employer in estimating the cost of production figures the depreciation in building, the wear and tear and depreciation in machinery, tools and appliances necessary in the manufacture of the product, and it was reasoned that injuries to the workmen arising out of the employment are likewise items to be included in this cost of production and that the slight increase in cost to the consumer will be hardly felt by him. Then again it was felt that a better feeling would be engendered between the state and its citizens; if the state shows the workman that it is interested in his welfare the latter will have a kindly feeling for his government.

CHAPTER V

The compensation idea has for its aim the protection of the great mass of workmen who in times of need and distress are unable to help themselves. The knowledge upon part of the workman that he will be cared for in case of injury and that his family will be provided for in case of death gives him a feeling of contentment and security, and makes for efficiency and good citizenship. But it must not be thought that the entire burden of the accident is borne by the industry. The workman under the various acts is obliged to accept a diminution in his weekly wages varying from 33 per cent. to 50 per cent., and in addition to this the fact that he receives nothing for pain and suffering he is obliged to undergo as a result of the injury must not be lost sight of.

The Supreme Court of Rhode Island in a recent decision said that the general purpose of the act is "to make compensation for the numerous accidents and injuries to workmen, which under present conditions occur in industrial enterprises, a part of the cost of production. It seeks to do this in accordance with a carefully regulated scheme disregarding many of the principles of the common law

which formerly affected actions to recover compensation for such injuries." [1] Another court says, "Workingmen's insurance and compensation laws are the products of the development of the social and economic idea that the industry which has always borne the burden of depreciation and destruction of the necessary machinery shall also bear the burden of repairing the efficiency of the human machine without which the industry itself could not exist." [2]

The first legislation by a state in this country was in 1909 when the legislature of the State of New York appointed a commission popularly known as the Wainwright Commission to investigate industrial accident statistics in that state and report with recommendations relative thereto. As a result of its labor the commission reported for adoption a compensation measure, patterned after the English Workmen's Compensation Act of 1897, which has since been extended to cover every kind of occupational injury.

In giving its reasons for departing from the old principles of common law liability the commission says:

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[1] Jillson vs. Ross 38 R. I. 145.

[2] Lewis etc. vs. Industrial Acc. Board (Mont.) 155 Pac. 268.

"FIRST, that the present system in New York rests on a basis that is economically unwise and unfair, and that in operation it is wasteful, uncertain and productive of antagonism between workmen and employers.

SECOND, that it is satisfactory to none and tolerable only to those employers and workmen who practically disregard their legal rights and obligations to fairly share the burden of accidents in industries.

THIRD, that the evils of the system are most marked in hazardous employments, where the trade risk is high and serious accidents frequent.

FOURTH, that as a matter of fact, workmen in the dangerous trades do not, and practically cannot, provide for themselves adequate accident insurance, and therefore, the burden of serious accidents falls on the workmen least able to bear it, and brings many of them and their families to want."

The legislature enacted into law the recommendations of the commission but the statute was later declared unconstitutional by the Court of Appeals of the State of New York,[1] on the ground that it made the employer liable, although without fault, in a suit for damages, without regard to the fault of the injured employee, short of willful and serious misconduct. An amendment to the constitution of the State of New York was adopted in 1913 to overcome the objections raised in the Ives case and another compensation act was then passed. It is interesting to note that about the same time a similar statute was held constitutional by the supreme

[1] Ives vs. The South Buffalo Railway Co. 201 N. Y. 271.

court of the State of Washington, that court refusing to follow the New York decision.

In 1910 the American Bar Association recognizing the desirability from a sociological standpoint of doing away with the long established but outgrown common law rules in accident cases, appointed a committee to draft an equitable compensation act and after a careful investigation covering a period of three years the committee made the following recommendations relative to that subject:

1st. It should be compulsory and exclusive of other remedies.

2nd. It should apply generally to industrial organizations above a certain limit of size.

3rd. It should apply to all accidents arising out of and in the course of such industrial operations regardless of the fault of anyone, self inflicted injuries not being counted as accidents.

4th. The compensation should be adjusted by a prompt, simple and inexpensive procedure.

5th. The compensation should be paid in regular installments continuing during the disability or in case of death during reasonable periods of dependency of the beneficiaries.

6th. The compensation should be properly proportioned to the wage received before the injury, having due regard, however, in proper cases to prospective wages; and the scale so far as possible should divide the wage loss sustained by the employees and their dependents equally between them and their employers.

7th. The compensation should be paid with as near absolute certainty as possible, in the most convenient manner, and there should be adequate security for deferred payments.

The report further says that the prevention of industrial accidents is a very important branch of the subject referred to and urges that every effort be made to procure the adoption of uniform rules for the proper safeguarding of industrial employees from accidents, and asserts that this element should always be given a most prominent position in connection with any schemes for compensation for industrial accidents.

Compensation laws have been adopted in thirty-two states and three territories in the United States: Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Porto Rico, Rhode Island, Texas, Vermont, Washington, West Virginia, Wisconsin and Wyoming; in addition a federal compensation law was passed September, 1916 by the Congress of the United States, for the benefit of federal employees.

In the following states the law is optional as to all classes of employers: Colorado, Connecticut, Illinois, Kansas, Massachusetts, Minnesota, Nebras-

ka, New Hampshire, Oregon, Rhode Island, Texas, Vermont, and West Virginia.

In the following states the law is elective as to private employers and compulsory as to public employers: Indiana, Iowa, Louisiana, Maine, Michigan, Montana, Nevada, New Jersey, Pennsylvania, and Wisconsin. In the following states the law is compulsory as to all employers: Arizona, California, New York, Maryland, Ohio, Oklahoma, Washington, and Wyoming. New York has two laws, one elective and the other compulsory, the latter covering hazardous employments.

On the first day of October, 1912, a compensation act became operative in the State of Rhode Island. The act provides that in an action to recover damages for personal injury sustained by accident by an employee arising out of and in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense: (a) That the employee was negligent; (b) That the injury was caused by the negligence of a fellow employee; (c) That the employee has assumed the risk of injury.

The act does not apply to actions to recover damages for personal injuries, or for death resulting from personal injuries, sustained by employees engaged in domestic service or agriculture, nor does it apply to employers who employ five or less workmen or operatives regularly in the same business,

but such employers may elect to become subject to the provisions of this act.

The act does not apply to actions to recover damages for personal injuries, or for death resulting from personal injuries, sustained by employees of an employer who has not elected to become subject to its provisions.

The election on the part of the employer is made by filing with the commissioner of industrial statistics a written statement to the effect that he accepts the provisions of the act, and by giving reasonable notice of such election to his workmen, by posting and keeping continuously posted copies of such statement in conspicuous places about the place where his workmen are employed; the filing of which statement and the giving of which notice operates to subject the employer to the provisions of the act and all acts amendatory thereof for the term of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year, each, unless the employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file with said commissioner a notice in writing to the effect that he desires to withdraw his election to be subject to the provisions of the act and shall give reasonable notice to his workmen as above provided.

CHAPTER VI

An employee of an employer who elects to become subject to the provisions of the act is held to have waived his right of action at common law to recover damages for personal injuries, if he shall not have given his employer at the time of his contract of hire notice in writing that he claims such right, and within ten days thereafter have filed a copy thereof with the commissioner of industrial statistics, or, if the contract of hire was made before the employer so elected, if the employee shall not have given the said notice and filed the same with said commissioner within ten days after notice by the employer, as above provided, of such election; and such waiver shall continue in force for the term of one year, and thereafter without further act on his part, for successive terms of one year, each, unless such employee at least sixty days prior to the expiration of such first or any succeeding year, files with the said commissioner a notice in writing to the effect that he desires to claim said right of action at common law and within ten days thereafter gives notice thereof to his employer.

A minor working at an age legally permitted un-

der the laws of Rhode Island is deemed *sui juris* and no other person shall have any cause of action or right to compensation for an injury to such minor employee except as expressly provided in the act; but if said minor has a parent living or a guardian, such parent or guardian, as the case may be, may give the notice and file a copy of the same, and such notice binds the minor in the same manner that adult employees are bound under the provisions of the act. In case no such notice is given, such minor is held to have waived his right of action at common law to recover damages for personal injuries. Any employee, or the parent or guardian of any minor employee, who has given notice to the employer that he claimed his right of action at common law may waive such claim by a notice in writing which shall take effect five days after the delivery to the employer or his agent.

The right to compensation for an injury, and the remedy therefor granted by the act, is in lieu of all rights and remedies as to such injury now existing, either at common law or otherwise.

If an employee who has not given notice of his claim of common law rights of action or who has given notice and has waived the same receives a personal injury by accident arising out of and in the course of his employment, he is entitled to compensation from an employer who has elected to become subject to the provisions of the act.

No compensation is allowed for the injury or

death of an employee where it is proved that his injury or death was occasioned by his willful intention to bring about the injury or death of himself or of another, or that the same resulted from his intoxication while on duty.

No compensation for loss of certain parts of the body is paid under the act for any injury which does not incapacitate the employee for a period of at least two weeks from earning full wages, but, if such incapacity extends beyond the period of two weeks, compensation begins on the fifteenth day after the injury.

During the first two weeks after the injury the employer is required to furnish reasonable medical and hospital services, and medicines when they are needed, the amount of the charge for such services to be fixed, in case of the failure of the employer and employee to agree, by the superior court.

If death results from the injury, the employer must pay the dependents of the employee wholly dependent upon his earnings for support at the time of his injury a weekly payment equal to one-half his average weekly wages, earnings, or salary, but not more than ten dollars nor less than four dollars a week, for a period of three hundred weeks from the date of the injury. But if the dependent of the employee to whom the compensation is payable upon his death is the widow of such employee, upon her death the compensation thereafter payable under this act must be paid to the child or children of the

deceased employee, including adopted and step-children, under the age of eighteen years, or over said age, but physically or mentally incapacitated from earning, dependent upon the widow at the time of her death. In case there be more than one child thus dependent, the compensation is divided equally among them. If the employee leaves dependents only partly dependent upon his earnings for support at the time of his injury, the employer must pay such dependents for a period of three hundred weeks from the date of the injury a weekly compensation equal to the same proportion of the weekly payments therein provided for the benefit of persons wholly dependent as the amount contributed annually by the employee to such partial dependents bears to the annual earnings of the deceased at the time of injury. When weekly payments have been made to an injured employee before his death, the compensation to dependents begins from the date of the last of such payments, but does not continue more than three hundred weeks from the date of the injury. If the deceased leaves no dependents at the time of the injury, the expense of burial and last sickness not in excess of two hundred dollars is allowed.

The following persons are conclusively presumed to be wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she lives

or upon whom she is dependent at the time of his death.

(b) A husband upon a wife with whom he lives or upon whom he is dependent at the time of her death.

(c) A child or children, including adopted and step-children, under the age of eighteen years, or over said age, but physically or mentally incapacitated from earning a living, upon the parent with whom he is or they are living or upon whom he or they are dependent at the time of the death of such parent, there being no surviving dependent parent. In case there be more than one child thus dependent, the compensation is divided equally among them.

In all other cases questions of entire or partial dependency are determined in accordance with the facts existing at the time of the injury. In such other cases, if there be more than one person wholly dependent, the compensation is divided equally among them, and persons partly dependent, if any, receive no part thereof during the period in which compensation is paid to persons wholly dependent. If there is no one wholly dependent and more than one person partly dependent, the compensation is divided among them according to the relative extent of their dependency.

No person is considered a dependent unless he be a member of the employee's family or next of kin, wholly or partly dependent upon the wages, earn-

ings or salary of the employee for support at the time of the injury.

If the employee dies as a result of the injury leaving no dependents at the time of the injury, the employer must pay, in addition to any compensation provided for in the act the reasonable expense of his last sickness and burial, not to exceed two hundred dollars.

While the incapacity for work resulting from the injury is total, the employer must pay the injured employee a weekly compensation equal to one-half his average weekly wages, earnings, or salary, but not more than ten dollars nor less than four dollars a week for the period of five hundred weeks from the date of the injury. In the following cases it is conclusively presumed that the injury resulted in permanent total disability, to wit: The total and irrevocable loss of sight in both eyes, the loss of both feet at or above the ankle, the loss of both hands at or above the wrist, the loss of one hand and one foot, an injury to the spine resulting in permanent and complete paralysis of the legs or arms, and an injury to the skull resulting in incurable imbecility or insanity.

While the incapacity for work resulting from the injury is partial, the employer must pay the injured employee a weekly compensation equal to one-half the difference between his average weekly wages, earnings, or salary, before the injury and the average weekly wages, earnings, or salary which he is

able to earn thereafter, but not more than ten dollars a week for a period of three hundred weeks from the date of the injury.

CHAPTER VII

In cases involving the following specified injuries the following amounts are paid in addition to all other compensation provided for in the act:

(a) For the loss by severance of both hands at or above the wrist, or both feet at or above the ankle, or the loss of one hand and one foot, or the entire and irrevocable loss of the sight of both eyes, one-half of the average weekly wages, earnings, or salary, of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of one hundred weeks. (b) For the loss by severance of either hand at or above the wrist, or either foot at or above the ankle, or the entire and irrevocable loss of the sight of either eye, one-half the average weekly wages, earnings, or salary of the injured person, but not more than ten nor less than four dollars a week, for a period of fifty weeks. (c) For the loss by severance at or above the second joint of two or more fingers, including thumbs, or toes, one-half the average weekly wages, earnings, or salary of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twenty-five weeks. (d) For

the loss by severance of at least one phalange of a finger, thumb, or toe, one-half the average weekly wages, earnings, or salary of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twelve weeks.

Where the employer has been accustomed to pay to the employee a sum to cover any special expense incurred by said employee by the nature of his employment, the sum so paid shall not be reckoned as part of the employee's wage. The fact that an employee has suffered a previous injury, or received compensation therefor, does not preclude compensation for a later injury or for death; but in determining the compensation for the later injury or death, his "average weekly wages" is such sum as will reasonably represent his weekly earning capacity at the time of the later injury, in the employment in which he was working at such time.

No savings or insurance of the injured employee, independent of the act, can be taken into consideration in determining the compensation to be paid, nor are benefits derived from any other source than the employer to be considered in fixing the compensation under this act. Any employer who refuses or delays payment under this act on account of the receipt by any injured employee of such savings, insurance or benefits, is deemed guilty of a misdemeanor, and on conviction thereof is liable to a fine of not less than one hundred dollars nor more

than five hundred dollars, or imprisonment not exceeding one year or both.

The compensation payable under the act in case of the death of the injured employee goes to his legal representatives; or, if he has no legal representative, to his dependents entitled thereto, or, if he leaves no such dependents, to the person to whom the expenses for the burial and last sickness are due. If the payment is made to the legal representative of the deceased employee, it must be paid by him to the dependents or other person entitled thereto under this act. All payments of compensation under the act cease upon the death of the employee from a cause other than or not induced by the injury for which he is receiving compensation.

No proceedings for compensation for an injury under the act can be maintained unless notice of the injury is given to the employer within thirty days after the happening thereof, and unless the claim for compensation with respect to such injury is made within one year after the occurrence of the same, or, in case of the death of the employee, or in the event of his physical or mental incapacity, within one year after death or the removal of such physical or mental incapacity.

Such notice must be in writing and must state in ordinary language the nature, time, place and cause of the injury, and the name and address of the person injured and must be signed by the person injured, or by a person in his behalf, or, in the event

of his death, by his legal representative, or by a dependent, or by a person in behalf of either.

Such notice must be served upon the employer, by delivering the same to the person on whom it is to be served, or by leaving it at his last known residence or place of business, or by sending it by registered mail addressed to the person to be served, or, in the case of a corporation, to the corporation itself, at his or its last known residence or place of business; and such mailing of the notice constitutes complete service.

A notice will not be held invalid or insufficient by reason of any inaccuracy in stating the nature, time, place or cause of the injury, or the name and address of the person injured, unless it is shown that it was the intention to mislead and the employer was in fact misled thereby. Want of notice is not a bar to proceedings under this act, if it be shown that the employer or his agent had knowledge of the injury or that failure to give such notice was due to accident, mistake or unforseen cause.

The employee, after an injury, at reasonable times during the continuance of his disability, if so requested by his employer must submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the state, furnished and paid by the employer. The employee shall have the right to have a physician, provided and paid by himself, present at such examination. Moreover, any justice of the superior court may,

at any time after an injury, on the petition of the employer or employee, appoint a competent and impartial physician or surgeon to act as a medical examiner, and the reasonable fees of such medical examiner as fixed by the justice appointing him must be paid by the party moving for such appointment.

Such medical examiner being first duly sworn to the faithful performance of his duties before the justice appointing him or clerk of the court is authorized to examine the injured employee in order to determine the nature, extent and probable duration of the injury. The medical examiner is required to file a report of every examination made of the employee in the office of the clerk of the superior court, and said report may be produced in evidence in any hearing or proceeding to determine the amount of compensation due such employee under the provisions of this act. If such employee refuses to submit himself for any examination provided for in this act, or in any way obstructs any such examination, his rights to compensation are suspended and his compensation during such period of suspension may be forfeited.

No claim for compensation under the act, or under any alternative scheme is assignable, or subject to attachment, or liable in any way for any debts.

The claim for compensation under the act is entitled to a preference over the unsecured debts of

the employer thereafter contracted to the same amount as the wages of labor are now preferred by the laws of this state.

In case payments have continued for not less than six months either party may, upon due notice to the other party, petition the superior court for an order commuting the future payments to a lump sum. Such petition upon presentation to the superior court may be summarily granted where it is shown to the satisfaction of the court that the payment of a lump sum in lieu of future weekly payments will be for the best interest of the person or persons receiving or dependent upon such compensation, or that the continuance of weekly payments will, as compared with lump-sum payments, entail undue expense or undue hardship upon the employer liable therefor, or that the person entitled to compensation has removed or is about to remove from the United States. Where the commutation is ordered the superior court fixes the lump sum to be paid at an amount which will equal the total sum of the probable future payments, capitalized at their present value upon the basis of interest calculated at five per centum per annum with annual rests. Upon paying such amount the employer is discharged from all further liability on account of the injury or death, and is entitled to a duly executed release, upon filing which, or other due proof of payment, the liability of such employer under any

agreement, award, findings, or decree shall be discharged of record.

If the employer and the employee reach an agreement in regard to compensation under the act all parties must file a memorandum of such agreement duly signed in the office of the clerk of the superior court having jurisdiction of the matter, and the clerk is required to thereupon present said agreement to a justice of the superior court, and when approved by the justice the agreement becomes enforceable by said superior court by any suitable process, including execution against goods, chattels and real estate, and including proceedings for contempt for willful failure or neglect to obey the provisions of said agreement. No appeal lies from the agreement thus approved unless upon allegation that such agreement has been procured by fraud or coercion. The agreement can be approved by the justice only when its terms conform to the provisions of the act. When death has resulted from the injury and the dependents of the deceased employee entitled to compensation are, or the apportionment thereof among them is, in dispute, such agreement may relate only to the amount of compensation.

If the employer and employee fail to reach an agreement in regard to compensation under the act, either employer or employee, and when death has resulted from the injury and the dependents of the deceased employee entitled to compensation are, or

the apportionment thereof among them is, in dispute, any person in interest may file in the office of the clerk of the superior court having jurisdiction of the matter, a petition in the nature of a petition in equity setting forth the names and residences of the parties, the facts relating to employment at the time of the injury, the cause, extent and character of the injury, the amount of wages, earnings, or salary received at the time of the injury, and the knowledge of the employer or notice of the occurrence of the injury, and such other facts as may be necessary and proper for the information of the court, and shall state the matter in dispute and the claims of the petitioner with reference thereto. Within four days after the filing of the petition, a copy thereof, attested by the petitioner or his attorney, must be served upon the employer in the same manner as a writ of summons in a civil action.

CHAPTER VIII

Within ten days after the filing of the petition, the employer must file an answer to said petition, together with a copy thereof for the use of the petitioner, which shall state the claims of the employer with reference to the matter in dispute as disclosed by the petition. No pleadings other than petition and answer are required to bring the cause to a hearing for final determination. The superior court may grant further time for filing the answer and allow amendments of said petition and answer at any stage of the proceedings. If the respondent does not file an answer, the cause shall proceed without formal default or decree pro confesso.

The petition is in order for assignment for hearing on the motion day which occurs next after fifteen days from the filing of the petition. Upon the days upon which said petition is in order for hearing it takes precedence of other cases upon the calendar, except ejectment cases.

The justice to whom said petition is referred is required to hear such witnesses as may be presented by each party, and in a summary manner decide the merits of the controversy. He must file a written decision with the clerk, and enter a decree thereon.

The decree is enforceable by said superior court by any suitable process, including execution against goods, chattels and real estate, and including proceedings for contempt for willful failure or neglect to obey the provisions of said decree. The decree must contain findings of fact, which, in the absence of fraud, are conclusive. The superior court may award as costs the actual expenditures but no counsel fees.

Any person aggrieved by the final decree of the superior court under the act may appeal to the supreme court upon any question of law or equity decided adversely to the appellant by said final decree or by any proceeding or ruling prior thereto appearing of record. To perfect an appeal the procedure is as follows: Within ten days after entry of said final decree the appellant must file a claim of appeal and, if a transcript of the testimony and rulings or any part thereof be desired, a written request therefor. Within such time as the justice of the superior court who heard the petition, or, in case of his inability to act from any cause, within such time as any other justice thereof shall fix, whether by original fixing of the time, or by extension thereof, or by a new fixing after any expiration thereof, the appellant must file reasons of appeal stating specifically all the questions of law or equity decided adversely to him which he desires to include in his reasons of appeal, together with a transcript of as much of the testimony and rulings

as may be required. The supreme court may allow amendments of said reasons of appeal. Upon the filing of said reasons of appeal and transcript, the clerk of the superior court is required to present the transcript to the justice who heard the cause for allowance. The justice after hearing and examination, must restore the transcript to the files of the clerk with a certificate of his action thereon within twenty days after filing the transcript.

Upon restoration of the transcript to the files, or, if there be no transcript, then upon the filing of the reasons of appeal, the clerk of the superior court is required to certify the cause and all papers to the supreme court. The claim of appeal suspends the operation of the decree appealed from, but, in case of default in taking the procedure required, such suspension ceases, and the superior court upon motion of any party may proceed as if no claim of appeal had been made, unless it be made to appear to the superior court that the default no longer exists. Any court day in the supreme court is a motion day for the purpose of hearing a motion to assign the appeal for hearing.

The supreme court after hearing any appeal may determine the same, and affirm, reverse or modify the decree appealed from, and may itself take, or cause to be taken by the superior court, such further proceedings as shall seem just. If a new decree be necessary, it may be framed by the supreme court for entry by the superior court. Thereupon

the cause is to be remanded to the superior court for such further proceedings as may be necessary.

No process for the execution of a final decree of the superior court from which an appeal has been taken can issue until the expiration of ten days after the entry thereof, unless all parties against whom such decree is made waive an appeal by a writing filed with the clerk or by causing an entry thereof to be made on the docket. If, in the course of the proceedings in any cause, any question of law arises which in the opinion of the superior court is of such doubt and importance, and so affects the merits of the controversy, that it ought to be determined by the supreme court before further proceedings, the superior court may certify such question to the supreme court for that purpose, and stay all further proceedings except such as are necessary to preserve the rights of the parties.

At any time before the expiration of two years from the date of the approval of an agreement, or the entry of a decree fixing compensation, and before the expiration of the period for which compensation has been fixed by such agreement or decree, any agreement, award findings or decree may be from time to time reviewed by the superior court upon the application of either party, after due notice to the other party, upon the ground that the incapacity of the injured employee has subsequently ended, increased, or diminished. Upon such review the court may increase, diminish, or discontinue the

compensation from the date of the application for review, in accordance with the facts, or make such other order as the justice of the case may require, but no order changing the status existing prior to the application for review can be made. The finding of the court upon such review shall be served on the parties and filed with the clerk of the court having jurisdiction, in like time and manner and subject to like disposition as in the case of original decrees. An agreement for compensation may be modified at any time by a subsequent agreement between the parties approved by the superior court in the same manner as original agreements in regard to compensation are required to be approved.

The superior court is required to prescribe forms and make suitable orders as to procedure adapted to secure a speedy, efficient and inexpensive disposition of all proceedings under the act; and in making such orders said court is not bound by the provisions of the General Laws relating to practice. In the absence of such orders, special orders may be made in each case. Proceedings may be brought either in the county where the accident occurred or in the county where the employer or employee lives or has a usual place of business. The court where any proceeding is brought has power to grant a change of venue.

An employee's claim for compensation under the act is barred unless an agreement or a petition, as provided in the act, is filed within two years

after the occurrence of the injury, or, in case of the death of the employee, or, in the event of his physical or mental incapacity, within two years after the death of the employee or the removal of such physical or mental incapacity. If an employee receiving a weekly payment under the act ceases to reside in the state, or, if his residence at the time of the accident is in an adjoining state, the superior court, upon the application of either party, may in its discretion, having regard to the welfare of the employee and the convenience of the employer, order such payment to be made monthly or quarterly instead of weekly.

All questions arising under the act, if not settled by agreement of the parties interested therein must be determined by the superior court.

Where the injury for which compensation is payable under the act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the employee may take proceedings both against that person to recover damages and against any person liable to pay compensation under the act for such compensation, but cannot have both damages and compensation; and if the employee has been paid compensation under the act, the person by whom the compensation was paid is entitled to indemnity from the person so liable to pay damages as aforesaid, and, to the extent of such indemnity, is sub-

rogated to the rights of the employee to recover damages therefor.

Any employer may enter into an agreement with his employees to provide a scheme of compensation, benefit, or insurance, in lieu of the compensation provided for in this act, subject to the approval of the superior court. Such approval may be granted only on condition that the scheme proposed provides as great benefits as those provided by the act; and, if the scheme provides for contributions by employees, it must confer additional benefits at least equivalent to these contributions. No scheme which provides for contributions by employees will be approved which does not contain suitable provisions for the equitable distribution of any money or securities held for the purpose of the scheme, after due provision has been made to discharge the liabilities already incurred, if and when such certificate is revoked or the scheme otherwise terminated.

Every employer who has elected to become subject to the provisions of the act must secure in one of the following ways the compensation for which he is or may become liable under said act:

(a) By insuring and keeping insured against liability to pay such compensation in any stock or mutual company, or association, authorized to take such risks in this state; (b) by furnishing a sworn statement or other proof, from time to time reasonably satisfactory to the commissioner of industrial

statistics, of his financial ability to pay directly to injured employees or their dependents such compensation; (c) by furnishing security, indemnity, or a bond, reasonably satisfactory to said commissioner, guaranteeing the payment of such compensation, said bond to run to the said commissioner for the benefit of the employees and their dependents and with such indemnity or security shall be deposited with him; (d) by a combination of the last two of the foregoing methods.

CHAPTER IX

Every compensation insurance policy must contain provisions to the effect that as between the employee and the insurer notice to and knowledge of the occurence of injury on the part of the employer is notice and knowledge on the part of the insurer; that jurisdiction of the employer for the purposes of the act shall be jurisdiction of the insurer; and that the insurer shall in all things be bound by and subject to the findings, judgments, orders and decrees rendered against the employer for the payment of compensation under the act. Every such policy must cover the entire liability of the employer under the act, and must contain an agreement by the insurer to the effect that the insurer shall be directly and primarily liable to the employee, and, in the event of his death, to his dependents, to pay to him or them the compensation, if any, for which the employer is liable.

Every policy must also provide that the employee, or, in the event of his death, his dependents, shall have a first lien upon any amount which may become owing on account of such policy to the employer from the insurer because of any accident to

such employee, and that in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the employee or his dependents, the said insurer must pay the same directly to the said employee or his dependents, thereby discharging to the extent of such payment the obligations of the employer to the employee or his dependents; and no such policy is allowed to contain any provisions relieving the insurer from payment because of the employer's inability to pay on account of insolvency, bankruptcy, or otherwise, during the period that the policy is in force or the compensation remains owing.

Any employee entitled to compensation from his employer under the act has, irrespective of any insurance contract, the right to recover such compensation directly from the employer, and, in addition thereto, the right to enforce in his own name, either by making the insurer a party to the original petition, or by filing a separate petition, the liability of any insurer who may have insured the employer against liability for such compensation.

When any employer is insured against liability for compensation and the insurer has paid any compensation for which the employer was liable, or has assumed the liability of the employer therefor, the insurer is subrogated to all the rights and duties of the employer and may enforce such rights in its own name.

If any employer fails to comply with these com-

pensation security provisions of the act he is liable for compensation to any injured employee or his dependents, according to the provisions of the act, or for damages in the same manner as if the employer had not elected to become subject to the provisions of said act, at the option of such employee or his dependents, but such option must be exercised and notice thereof in writing given to the employer within thirty days after the accident to such employee, otherwise the employer shall be liable only for the compensation payable under this act by employers who have elected to become subject to the provisions of said act.

The writer confesses to having a decided opinion as to what constitutes a normal and just compensation act, and while he feels that the Rhode Island act is a benefit inasmuch as it is a recognition of the compensation principle, nevertheless he is persuaded that the act is far from being a model in the field of compensation legislation. Its provisions must be changed in several vital particulars before it can be classed as a thoroughly just and righteous act.

It is now generally conceded that the compensation act does not bestow a privilege or grant a favor, but is only giving the workman what he is justly entitled to in industrial life. The percentage of injuries resulting in permanent incapacity is small; more than one-half of all the disability cases result in recovery within the fifteen

day period. The best statistics in this respect are furnished by Russia and Italy. In Italy reports show that out of 57,617 accidents occurring in a year 25.32 per cent. resulted in disability for a period of from six to ten days; 22.70 per cent. from eleven to fifteen days; 14.65 per cent. from sixteen to twenty days; 15.11 per cent. from twenty-one to thirty days; 12.77 per cent. from thirty-one to sixty days; 3.93 per cent. over sixty days.

In Russia out of 57,196 accidents 23.5 per cent. lasted over seven days; 24.70 per cent. from eight to fourteen days; 12.10 per cent. from fifteen to twenty-one days; 6.81 per cent. from twenty-one to twenty-eight days; 11.35 per cent. from twenty-nine to sixty-three days; 1.28 per cent. over ninety days. These statistics show that the vast majority of cases receive no compensation benefit when there is a two weeks waiting period, although the time when those affected by an accident most welcome assistance is when the injury occurs and before they have opportunity to adjust themselves to the changed conditions.

Furthermore the disability allowance in Rhode Island and the other states with a similar law is inadequate. An injured workman should be allowed during the period of total disability an amount equal to 66 2-3 per cent. of his weekly wages with a maximum of fifteen dollars and a minimum of five dollars and it should continue during the period of disability. This amount of allow-

ance is operative in Massachusetts, New York, Ohio, Porto Rico, and is also provided for in the recent compensation law enacted by the United States government. California allows 65 per cent., Hawaii 60 per cent., Wisconsin 65 per cent.; in New York, Ohio, Wisconsin, and under the federal law the allowance continues for life in case of permanent disability. California allows 65 per cent. for two hundred and forty weeks, and then 40 per cent. for life in case of permanent injury. In Wisconsin if a nurse be required the compensation is increased to 100 per cent. after ninety days.

Practically all the foreign laws provide for compensation during life in case of permanent injury. In case of partial disability the workman should receive 66 2-3 per cent. of the difference between his weekly earnings before his injury and his wage earning capacity after the injury, but not to exceed fifteen dollars nor less than five dollars. In case of death of the injured workman the widow should receive suitable compensation until her death or remarriage, and in the latter event a lump sum equal to two years' compensation should be granted her. The usual percentage allowed the widow in such cases is 35 per cent. of the workman's weekly wages and an allowance of 10 per cent. for each child under eighteen years of age, the total allowance for the widow and children not to exceed 66 2-3 per cent. of such wages. In case there be no widow, the total allowance should be divided

among the decedent's dependents. New York, Pennsylvania, Minnesota, Hawaii, Lousiana and Nevada and the federal law make provision for the widow along the lines above stated, and lump sum payments are provided for in New York, Minnesota, Oregon, Washington and West Virginia.

The waiting period in all cases should be reduced from fourteen days to four days. The theory of the waiting period is that if the workman be compelled to wait a certain period before his compensation commences malingering in cases of trivial injuries will be prevented. Malingering has not been a serious matter in this country. In France where the greatest complaint has been made with regard to it, the answer of the Chamber of Deputies of that country to the same was to provide in connection with the waiting period of four days that if the disability lasted more than ten days compensation should be payable from the first day, showing that the French legislators did not consider that the malingering complaints were entitled to serious consideration.

The federal law has a waiting period of three days, Iowa one week, Nevada five days, Ohio one week, Oregon no waiting period, Texas one week, West Virginia one week, Wisconsin one week, Louisiana one week. Massachusetts which formerly had a waiting period of fourteen days has reduced the same to ten days. Under the Rhode Island act a man earning twelve dollars per week

has to be incapacitated for a period of one month to get twelve dollars, and it needs no argument to demonstrate that such an allowance is not fair compensation. An act changing the waiting period in Rhode Island from two weeks to one week is now before the Rhode Island legislature and should be acted upon favorably.

One of the most important provisions of the present law, and a provision which should be immediately amended so as to do away with its present inequitable effect is that which relates to the matter of medical attendance upon the injured employee. This matter of medical service is of vital importance to the state as well as to the employer and his employee. The employee is interested in being made physically well in order that he may enjoy life in common with his fellowmen and be able to support and maintain his family in accordance with his station. The employer is interested in seeing that an injured workman has the best medical and surgical attendance, as proper treatment means a consequent reduction in the period of disability, and in many cases the restoration to activity of a skilled workman whose services may be of great value to the industry. The state, interested in the welfare of its people, wishes preserved to itself well and happy workmen instead of maimed and helpless dependents. The wording of the present law relating to this phase of the subject is as follows: "During the first two weeks after the injury the employer

shall furnish reasonable medical and hospital services and medicine whenever needed. The amount of the charge for such services to be fixed by the Superior Court in case of the failure of the employer and employee to agree."

CHAPTER X

It is the understanding of the writer that a great many of the employers allow the injured employee to select the physician, on the other hand a great many employers deny to the employee this right and require him to submit to treatment by a physician or at a hospital selected by the employer. We think that any possible ambiguity as to whether, under the above section, the right to select the physician rests with the employer or employee should be done away with and that the act should provide explicitly that the injured employee shall have the right to nominate the physician. When an injury occurs to a workman the most natural thing upon his part is to ask that a physician of his choice be summoned. An intimate relationship exists between the physician and the patient, and the latter is guided to a great extent by the advice of his physician in connection with his future action and treatment. The fact that an employee is under treatment of a doctor whom he trusts and in whom he has confidence plays an important part in the progress of his condition. It is neither fair nor satisfactory to require an injured man to place himself in the hands of a

stranger who is to have absolute control over his physical well-being. We realize that compensation is not based upon sentiment but we submit that the injured workman being human must be treated as such. It is therefore submitted that it is better for all concerned to permit the employee to make his own selection. Indeed the only objection that can be urged to this is that it may promote malingering, and also that the doctors may pad their bills. Although the present law has been in force in this state for the past four years, and although many industries have permitted the employee to select his own physician, we do not know that there have been any complaints as to improper charging upon the part of the attending physicians.

In the last report of the Commissioner of Industrial Statistics (1916) the following appears: "Insurance companies paid out for the same purposes, (industrial accident compensation), $169,094.91, an average of $1.34 per person, or $0.70 less per capita in 1915 than in 1914, and $0.67 more per capita in 1915 than in 1913. The cost to employers carrying compensation insurance under the act, based on the 122,534 wage earners employed in 1915, and the $390,750.38 paid by establishments under the act to insurance companies, was $3.14 per wage earner. If the cost to insurance companies carrying on business in Rhode Island in 1915 was $1.34 per wage earner on account of medical attention and compensation for injuries, and the per

capita premium $3.14, the difference of $1.80 per wage earner represents an amount to be charged up for the actual carrying on of compensation business and the necessary surplus to be laid aside for unusual payments which may arise on account of catastrophies and for profits. The cost per wage earner to employers carrying compensation insurance under the act, based on the average number of wage earners employed, and the amount of premiums paid to insurance companies was $0.59 less per wage earner in 1915 than it was in 1914, and $0.27 per wage earner more than in 1913 which was largely an experimental year. The cost per wage earner to insurance companies for medical services was $0.45 per wage earner in 1915, against $0.64 per capita in 1914, a decrease of $0.19, but an increase of $0.12 per capita over the cost of medical attention in 1913."

We think that the doctors of this state can be trusted to do what is fair and right in the matter of attendance upon injured workmen and charges for such services. If, however, there should be any fear upon the part of any person in interest that unfairness would be practiced if the right be given the patient to select his own physician, then let a provision be incorporated in the law to the effect that if any physician encourages malingering or practices any fraud upon the act he shall be deprived of his license to practice medicine in this state and shall be criminally prosecuted. The act,

it is to be noted, now contains provisions permitting the employer at any time to have a physician of his choice appointed to examine the injured workman, and in addition he may ask the Superior Court to appoint an impartial physician to make an examination and report to the court. It would seem that these should be adequate safeguards against malingering.

A further objection to section five of the present act is that it limits the period of treatment to two weeks. It is absolutely necessary that an injured person should have proper medical treatment so long as he reasonably requires the same. The state itself is interested in seeing that an injured workman receives the best medical attention so long as the same may be necessary. Moreover, proper treatment, in addition to hastening recovery reduces the period of disability and, therefore, the cost of compensation. Most of the foreign laws recognize the need of such provision and grant full medical treatment.

In this country California allows treatment for ninety days, Colorado for thirty days, Connecticut necessary treatment, Illinois eight weeks, Indiana thirty days, Kentucky ninety days, Louisiana reasonable treatment, Maryland necessary treatment, Massachusetts two weeks or indefinitely if the accident board so orders, Michigan three weeks, Minnesota ninety days, Nebraska twenty-one days, Nevada four months, New York sixty days, Ohio

necessary treatment, Porto Rico eight weeks, West Virginia reasonable treatment, Wisconsin ninety days, Federal law reasonable treatment. Thus it will be noted that a great many of our states have gone a long way in the direction of the best European thought in this respect, and we feel that Rhode Island is behind the times in clinging to the two weeks period.

Again, that part of section five of the act which virtually precludes the physician from enforcing his claim in case it be disputed is most unjust. The physician may render most meritorious services to both employee and employer in connection with a personal injury case; he may be able to save the life and limb of an injured employee, returning the man with a minimum loss of time to the industry, thus relieving the employer of a heavy compensation charge, and yet if his reasonable bill be disputed he is remediless to recover his just claim in case the employee declines to institute legal proceedings against the employer.

The law should not permit the physician to be left in such a plight. In a recent article [1] the writer referred to certain cases in which as counsel for a surgeon he had occasion to argue the construction of section five of the act before the courts of

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[1] Workmen's Compensation Act and The Physician, published in Quarterly Bulletin of State Board of Health of Rhode Island, July, 1916.

Rhode Island and to have same authoritatively passed upon. In one of the cases referred to a workman was injured in the course of his employment and sustained a transverse fracture of the patella. His family physician who was summoned saw that the injury was a serious one and a skilled surgeon was called to perform a difficult operation. The operation was successful and the physician rendered a bill to the employer who turned the same over to an insurance company which was handling the case in behalf of the employer. The agent of the insurance company declined to pay the bill unless a substantial reduction was made in the amount thereof. The surgeon stood firm for payment of the bill as rendered, stating that his charge was reasonable. The employer refused to interfere stating that the matter was not in his hands. There being no way provided under the compensation act by which the physician could proceed against the employer the surgeon was absolutely powerless to have the claim determined upon his own motion.

The employee, however, being duly appreciative of the service rendered to him by the surgeon consented to bring a petition in his own name against the employer in order that the matter might be passed upon by the court. When this petition was filed the surgeon requested permission of the court to intervene, claiming that he was the real party in interest, since it was his claim for services

that was before the court. The court, however, held that the surgeon had no standing under the act and refused to allow him to intervene.

The matter was then presented to the court upon petition of the employee and at the conclusion of the hearing thereof the presiding justice rendered a decision in favor of the surgeon for the full amount of the claim, stating that he thought the charge was just and reasonable. After this decision the cause was appealed to the Supreme Court, where it is now awaiting final disposition. It will be seen that the only method under the present act by which a physician, in case his bill be disputed, can require payment from the employer is to enlist the services of the workman, and by basing a petition on the ground of a theoretical dispute between the employer and employee call the matter to the attention of the court. If the physician is unable to enlist the aid of the employee, because of absence, unwillingness upon the part of the employee to support such proceedings, or because of any one of a number of reasons that might be advanced such as fear of loss of employment, unwillingness to incur expense, et cetera, the physician is remediless and is relegated to a possible action against the employee who usually has little, if any, means with which to meet the claim.

One of the bills now before the legislature of this state has for its purpose the remodeling of section five so as to do away with the obnoxious features

herein noted. This bill in its essentials provides for the furnishing of medical attendance by the employer for the first four weeks after the injury, the privilege being given the employee to select his own physician. The physician is given the right in case of dispute to petition the superior court in his own name for a determination of the controversy. While this bill is not an ideal one, nevertheless, it goes a long way in the direction of more equitable provision in the respects mentioned, and should receive the support of all fair-minded and forward-looking people.

There should, however, be a further provision in connection with that amendment to the effect that if the matter be brought before the court upon petition of the physician, costs and counsel fees may be awarded by the court, if the end of justice so requires. It is manifestly unfair to require the physician, where he has a meritorious claim, to be obliged to try it out before the superior court, and after having it pronounced just by that court, to be obliged to go to the supreme court, as in the case above referred to, and, after final decision in his favor, to be obliged to bear all the expense of legal proceedings simply because the present law provides that no counsel fees shall be awarded in any event upon any petition. In equity matters, our supreme and superior courts are empowered to award counsel fees and costs in any case where

justice may require such action. There is no reason why a like provision should not be inserted in the compensation act.

CHAPTER XI

It may not be amiss to refer to a few of the decisions rendered by various courts in this country relative to the matter of medical attendance in compensation cases when the employer is required to provide suitable medical attendance. It has been held that when the law requires that the employer shall provide for the injured employee proper medical and surgical attendance, the employer may use his own judgment and exercise his own choice so long as he does not make an unreasonable selection as to the person who shall render such services and it is only when he fails to fulfill this duty that the employee may select a physician at the employer's expense. Where it is shown that the employer delays an unreasonable time in offering medical treatment to the employee, the latter may call in a physician of his choice and the employer will be responsible for the expense of the same. Proper medical attendance means that the same shall be furnished as soon as needed; if it is impossible to procure such attendance in time for first aid it means that a physician should be put in charge of the case as soon as it is necessary to change the

emergency dressing. If the employer does not do this he is precluded from insisting upon the right to supply medical treatment. Where an employer's foreman had knowledge of the injury on the day it happened and took no steps to furnish medical attendance until the following day, and the injured man in the meantime secured the services of another physician who continued to treat him until he was cured, it was held that the employer must pay the reasonable charge of the physician who rendered such services, on the ground that while the law gives the employer the right to select the physician he must act promptly.

The employer is not required to discover cases of personal injuries to their employees, the latter must see to it that notice of the injuries is promptly brought to the attention of the employer with the request that medical aid be provided. The injured employee is, however, only required to let his employer or the employer's superintendent or other person in authority know that he has been injured. Knowledge of the fact of the injury on the part of any person in authority is sufficient notice to the employer of the need of necessary medical or surgical treatment to which the employee is entitled under the law. Where an emergency treatment is imperative as where a skull is fractured the employer must pay the expense of the attending surgeon even though the employer had no opportunity to tender treatment by his own physician. Where

a fracture is involved requiring the aid of scientific apparatus such as X-ray photographs the employee is justified in going at once to an expert in that line for a correct diagnosis of his case. The injured employee is justified in seeking emergency treatment on the day of his injury from any physician, unless specifically directed by the employer prior to securing such treatment as to where to go, and the charge for such emergency treatment is a proper charge against the employer. Where the employer believes that the disability was caused by disease and not by accident and fails to provide medical attendance and it is found later that the injury was caused by an accident the employer must pay a reasonable charge for medical services of the attending physician.

Where the employer's physician denied that any disability was sustained by the employee, who claimed to have been injured, the employee if, in fact, he were disabled had a right to be treated by his own physician at the expense of the employer. This is on the ground that mistaken advice does not absolve the employer from the charge of furnishing medical attendance. Where an injured employee suffering from a fracture of the right clavicle was put in the hands of a country physician who did not have proper facilities for treating him the employee was held justified in going to a hospital and having his injuries attended to at the expense of the employer. Where a member of a fra-

ternity having sustained an injury called upon his lodge physician for such medical services as he was entitled to receive free of charge by reason of his said membership, the physician rendering the services was held not entitled to recover against the employer for the reasonable value thereof.

Apropos the subject of medical attendance it may be of interest to note the following observations of the Wisconsin Industrial Commission contained in its report for the period 1914 to 1915: "The Wisconsin Act provides more liberal medical aid than any other Compensation Act in the United States. In this respect the law is eminently wise. On economic grounds alone it is cheaper for the employer to save an arm by an expensive operation than to pay indemnity for the loss of an arm. It is for the interest of the employer to give the best medical attendance; that it is also for the interest of the workman and of the community goes without saying. There is reason to believe, however, that medical service in this state is costing too much. The Commission's records indicate that physicians and hospitals received over $400,000 for services rendered under the Compensation Act during the last fiscal year. This is nearly one-half the total amount paid directly to injured workmen and their families. It is probable that the compensation act has very greatly increased the income of the medical profession as a whole. Hundreds of serious injuries which doctors formerly treated on a charity basis

are now paid cases. This is as it should be. The medical profession ought not to be called upon to take care of injured workmen for less than the service is fairly worth. On the other hand, since the pay is certain and the number of cases large, the fees should not be exorbitant. A great number of physicians, including the recognized leaders of their profession, have shown a spirit of co-operation and have rendered highly skilled service at very moderate cost. Some, however, have been disposed to feel that the employer or the insurance company is rich and to render bills based upon that assumption. Chapter 241 of the laws of 1915 gives the commission power to pass upon the reasonableness of medical and hospital bills in disputed cases. It is hoped that a basis of charge can be agreed upon which will be fair to all parties concerned."

The writer is of the opinion that every compensation law should provide for a commission of from three to five persons to carry out its provisions. One of the cardinal principles to be aimed at in this sort of legislation is that compensation be expeditiously granted and that the interest of the workman be properly safeguarded. The present law provides that the employer and the employee may enter into an agreement as to the compensation to be paid, subject to the approval of the Superior Court. Now the Superior Court is a very busy tribunal and the time of the justices thereof is fully occupied in giving attention to the regular business of the court.

It is a physical impossibility for the Court to go into the merits of each of the thousands of compensation agreements that are yearly presented for approval and the result is that such approval becomes more or less perfunctory.

There is no power now possessed by anybody to hasten payment of compensation to needy and deserving claimants. Under the present system it is an easy matter to delay payment of compensation for an appreciable length of time while a petition seeking to enforce compensation wends its way through the courts. Under the present law if legal proceedings be instituted by an employee to recover compensation under the Act, three weeks at least must ensue before same can be heard. This results from the provision that a compensation petition is not in order for assignment for hearing until the motion day which occurs next after fifteen days from the time of filing of the petition. As the regular motion day in our Superior Court is on Saturday of each week it is evident that the above mentioned period must intervene before hearing. An example of the hardship which sometimes results from this situation was called to our attention recently. A father of a family of small children while operating a drop-press, so-called, lost the index finger of his right hand. Owing to some dispute between the employer and an insurance carrier, compensation for the injury was not attended to although the employer had accepted the Act.

The workman was earning fourteen dollars a week at the time he was injured, but his living expenses consumed his earnings and it was impossible for him to accumulate any surplus. Finally his means became exhausted, and after a period of three months, the employee preferred a petition to the court, and after the expiration of three weeks more his petition was heard by the Presiding Justice of the Superior Court, and full compensation awarded him. During the interim between the filing and the hearing of the petition, the workman was dependent upon the charity of friends for the means with which to keep himself and his family from starvation.

The writer has the highest praise for the way in which our Superior and Supreme Courts have met the questions presented to them under the compensation act. The judges of both courts have taken a broad, liberal and progressive view of the act; they have shown a keen appreciation of the great economic principles underlying this scheme of social justice. The Supreme Court, in a learned opinion by Mr. Justice Sweetland, announced as the law of this State a great humanitarian doctrine when in interpreting the act in the case of *Donahue vs. E. A. Sherman's Sons Company, decided July* 5, 1916,[1] it says:

> "Although we are of the opinion that, upon a strict construction of the statute, the respondent's appeal should be denied, it should not be overlooked that the act and like acts in the different states, are universally

[1] 39 Rhode Island Reports 373.

> considered as of a remedial character, the provisions of which should be construed broadly and liberally in order to effectuate their purpose. This court in its former opinions has recognized the liberal spirit of this legislation and has been guided by that liberality in the construction of the provisions of the Rhode Island act, and in the application of those provisions to particular cases."

The writer's experience in the trial of compensation cases before the Superior Court has been that the learned jurists in that court never seek to contract the provisions of or curtail the benefits under the act, but give effect to the act in an equitable and just manner, and take a broad and liberal view of the claims of the workmen who seek relief under the act.

The establishment of an industrial accident board would mean that the medium would be constantly at hand whereby disability cases would receive prompt investigation and attention by a body of men devoting their entire attention to such matters, and the welfare of the injured person, who is unable as a general rule to look after himself, would be expeditiously and properly cared for. Cases of delayed compensation and much financial suffering upon the part of the needy and deserving workman would be obviated. This commission of experts could not fail in addition to relieving the court of much labor and the state of much expense, to so mold the procedure under the law as to make the same an instrument of true justice, protecting fully the rights, interests and welfare of all concerned.

CHAPTER XII.

The constitutional validity of industrial accident compensation legislation has been established by the highest legal tribunal in this country—the Supreme Court of the United States—in decisions recently rendered wherein the principles underlying the compensation laws under review were considered at length, and the acts held valid.[1] When the framers of the earlier acts undertook the work of drafting compensation legislation they were confronted with the task of formulating laws which would survive objections that were bound to be urged against the constitutionality of the measures.

In respect of this matter the draftsmen received no aid from the experiences of foreign nations because no question involving the validity of the acts of the lawmaking bodies could possibly arise under the European forms of government. In England whatever doubt may have existed in the

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[1] New York Central Rd. Co. v. White 37 Sup. Ct. Rep. 247.
Mountain Timber Co. vs. State of Wash. 37 Sup. Ct. Rep. 260.
Hawkins v. Bleakly 37 Sup. Ct. Rep. 255.

very early days with regard to the authority of parliament to legislate free from restraint, disappeared in the time of Blackstone, as we find that eminent authority declaring that no matter what the nature of the act of parliament may be if the wording of it is clear "there is no court that has power to defy the intention of the legislature."[1] In France no reference is made to the judiciary in the present constitution of that country and this omission has given rise to the conclusion that the judiciary is to be regarded as a part of the executive department of the government. In Germany by federal legislation adopted in 1872 and 1873 the Reichstag was granted full power to legislate upon all matters relating to civil law and consequently the lawmaking bodies of that country have been at liberty to enact such legislation as they saw fit and it became the supreme law of the land and legally unassailable.

In this country the federal and state judiciaries are constitutional creations. The province of the judiciary is to interpret the law in any proceeding that may be brought before it. The legislature, as the lawmaking body, is under constitutional obligation to refrain from enacting laws in conflict with the constitution. If, therefore, the court finds in the determination of a matter which has been presented to it for adjudication, that the legislative will is in conflict with the constitution it may declare the

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[1] Blackstone's Commentaries Vol. 1 P. 91.

legislation invalid and thus over-ride the judgment of that department of the government. While it is the imperative duty of the court to decline to enforce unconstitutional legislation, the power of the court to nullify the will of the people as expressed through the lawmaking body is always exercised with caution, and only when the duty is plain and unmistakable. The presumption is that a state legislature will not violate the constitution and this presumption is so strong that where the action of the legislature is assailed as being violative of the constitution the court is bound to make every possible presumption in favor of the validity of the law.

Both state and federal courts may be required to pass upon questions of constitutional law. Whenever in course of the hearing of a cause before any court a question as to whether a statute conforms to the constitution is raised, the court must dispose of it. The decision of the state court settles the question as to the constitutional validity of an enactment so far as it relates to the state constitution, and the federal court passes upon the questions raised when the validity of legislation is challenged in connection with the federal constitution. A state law may, therefore, be reviewed as to its constitutionality by both the state and federal tribunals.

The recent decisions of the United States Supreme Court in the New York, Washington and Iowa cases above referred to, are momentous in the economic history of our country and will

take rank with other great declarations of that august tribunal. Both the New York and Washington acts which the court declared valid provide for compulsory compensation. Under the terms of the New York act, the employer may select one of three ways in which to insure the payment of the stipulated compensation, to wit, by insuring in a state fund or in a private stock company, or by furnishing satisfactory proof of his financial ability to pay the compensation. Under the Washington law, a state fund is established and all employers carrying on occupations designated in the act are compelled to contribute to this fund, and it further provides that an employer must contribute to the fund whether injuries occur to his own employees or not, so that, no matter how careful the employer may be in conducting his business and notwithstanding the fact that in the operation of his industry no injuries are occasioned to his employees, he is required, nevertheless, to contribute a stated sum to the state fund equally with other employers in the same class, in order that sufficient funds may always be on hand to compensate workmen who are injured elsewhere. The Iowa act is an elective law of the same general character as those in force in our various commonwealths; it contains a specific provision requiring the employer to insure his liability in some corporation or association approved by the department of insurance.

The principal objections urged in opposition to

the validity of those acts were: That the employer's property was taken without due process of law, because he is subjected to a liability for compensation without regard to any neglect or default on his part, and in spite of the fact that the injury may be the result solely of fault on part of the employee; also, that both employer and employee were deprived of the liberty of acquiring property because they were prevented from making such agreement as they chose respecting the forms of the employment.

In considering the constitutional question, the court said that the matter must be viewed from the standpoint of both the employer and employee; that, if the statute be invalid against one, it was invalid against the other. After referring to the fact that it recognized the close relation of the rules governing responsibility as between the employer and employee in connection with the constitutional right to the enjoyment of liberty, Justice Pitney says that those rules of conduct may be altered by the legislature in the interest of the public. "No person," says the court, "has a vested interest in any rule of law entitling him to insist that it shall remain unchanged for his benefit." While querying as to the validity of legislation abolishing established legal rules without providing a fair substitute, the Justice observes that compensation statutes are not open to such objection; that while setting aside one body of rules another reasonably just system is established in its stead. In considering the ques-

tion as to the reasonableness and justice of such legislation, the court remarks, "It is plain that, on the grounds of natural justice, it is not unreasonable for the State, while relieving the employer from responsibility for damages measured by common law standards and payable in cases where he or those for whose conduct he is answerable are found to be at fault, to require him to contribute a reasonable amount, and according to a reasonable and definite scale, by way of compensation for the loss of earning power incurred in the common enterprise, irrespective of the question of negligence, instead of leaving the entire loss to rest where it may chance to fall—that is, upon the injured employee or his dependents." Replying to the criticism that the act creates liability without fault, the court says, "This is not a novelty in the law. The common law liability of the carrier, of the inn-keeper, of him who employed fire or other dangerous agency or harbored a mischievous animal, was not dependent altogether upon question of fault or negligence." As to the objection that the legislation interfered with freedom of contract, the court remarks that while admitting that such legislation did limit the liberty of the employer and employee to contract as they saw fit with respect to the employment, nevertheless, that the legislation was fairly supportable as a proper exercise of the police power of the state. "The subject matter in respect of which freedom of contract is restricted," says the court, "is the

matter of compensation for human life or limb lost, or disability incurred, in the course of hazardous employment, and the public has a direct interest in this as affecting the common welfare. The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the State must suffer." In upholding the right of the State to make compensation compulsory, the court says, "It is evident that the consequences of a disabling or fatal injury are precisely the same to the parties immediately affected, and to the community, whether the approximate cause be culpable or innocent. Viewing the entire matter, it cannot be pronounced arbitrary and unreasonable for the State to impose upon the employer the absolute duty of making a moderate and definite compensation in money to every disabled employee, or in case of his death to those who were entitled to look to him for support, in lieu of the common-law liability confined to cases of negligence." In considering the compulsory state insurance provision of the Washington act, Justice Pitney makes the following declaration, and this utterance is of such splendid character that it deserves to be quoted *in extenso*: "It seems to us that the considerations to which we have adverted are not to be deemed arbitrary and unreasonable from the standpoint of natural justice and are sufficient to support the State of Washington in concluding that the matter of compensation for accidental in-

juries with resulting loss of life or earning capacity of men employed in hazardous occupations is of sufficient public moment to justify making the entire matter of compensation a public concern, to be administered through state agencies. Certainly the operation of industrial establishments that in the ordinary course of things frequently and inevitably produce disabling or mortal injuries to the human being employed, is not a matter of wholly private concern. It hardly would be questioned that the State might expend public moneys to provide hospital treatment, artificial limbs, or other like aid to persons injured in industry, and homes or support for the widows and orphans of those killed. Does direct compensation stand on a less secure ground? A familiar exercise of state power is the grant of pensions to disabled soldiers and to the widows and dependents of those killed in war. Such legislation usually is justified as fulfilling a moral obligation or as tending to encourage the performance of the public duty of defense. But is the State powerless to compensate, with pensions or otherwise, those who are disabled, or the dependents of those whose lives are lost, in industrial occupations that are so necessary to develop the resources and add to the wealth and prosperity of the State? A machine as well as a bullet may produce a wound, and the disabling effect may be the same. In a recent case, the Supreme Court of Washington said: 'Under our statutes the workman is the soldier of organized

industry accepting a kind of pension in exchange for absolute insurance on his master's premises.' It is said that the compensation or pension under this law is not confined to those who are left without means of support. This is true. But is the State powerless to succor the wounded except they be reduced to the last extremity? Is it debarred from compensating an injured man until his own resources are first exhausted? This would be to discriminate against the thrifty and in favor of the improvident. The power and discretion of the State are not thus circumscribed by the Fourteenth Amendment."

Our highest court has thus placed in the hands of the State the power to place upon the statute book such compensation legislation as may be deemed suitable and advisable for the promotion of the public welfare. Full power is granted to make such legislation compulsory and to establish any sort of reasonable system to make the payment of compensation absolute. Let each State therefore take advantage of the great opportunity thus presented to advance the public good, and let there be placed upon the statute books of all our commonwealths a system of compensation legislation, which, reflecting justice, righteousness and humanitarianism, will bring happiness and contentment to their people, thus, truly, carrying out the purpose of our great government as declared in the immortal Constitution,—the greatest, the best and most profound exposition of sound governmental doctrine which the world has ever known.

APPENDIX A.

Summary of Compensation Laws in Force in the Principal States of the United States.

California.

Applies to all employments, public and private. Is elective as to farm labor, domestic service and casual employment. Compulsory as to all other employments.

All injuries arising out of and in course of the employment, unless due to intoxication or willful misconduct.

Compensation begins on the fifteenth day after the employee leaves work.

Employer furnishes such medical treatment as may be required at the time of the injury and within ninety days thereafter, but such time may be extended by the Commission.

In case of total disability the employee receives 65 per cent. of his average weekly earnings for two hundred and forty weeks; if permanent, 40 per cent., after the above period, for life; if temporary, the allowance is 65 per cent. of the average weekly

earnings, the maximum for a single injury being three times the annual earnings.

In case of partial disability, if the same be temporary, 65 per cent. of the weekly wage loss is allowed with a maximum compensation of three times the average annual earnings, the maximum period being two hundred and forty weeks.

If death results from the injury total dependents are entitled to receive 65 per cent. of the average weekly earnings until the payments equal three times the average annual earnings, including burial expenses, and disability expenses, if any.

Compensation settlements may be made by agreement of the parties, subject to the approval of the Commission.

Disputes are settled by the Commission upon written application by any party in interest.

The Commission has jurisdiction over every place of employment and is authorized to make rules and regulations for the safety of employees.

Connecticut.

Applies to all public and private employments, except casual employments, out-workers, or members of employer's family residing with him. Does not apply to employers having less than five employees regularly employed.

All injuries arising out of and in course of the employment, unless due to willful and serious misconduct, or intoxication.

Compensation commences on the eleventh day following disability.

Employer furnishes reasonable and necessary medical treatment and the charge for the same is regulated by the prevailing fees in the community.

For total disability 50 per cent. of the average weekly earnings with a maximum of ten dollars per week and a minimum of five dollars per week is allowed; maximum period five hundred and twenty weeks.

For partial disability 50 per cent. of the average loss of earning power is allowed with a maximum of ten dollars per week for not over three hundred and twelve weeks.

If death results from the injury within two years 50 per cent. of the average weekly earnings is allowed in case of dependency.

Illinois.

Applies to all public employments; officials and beneficiaries of an established pension fund are excepted. Applies also to all private employments, except casual or those not in the usual course of trade.

There is a waiting period of six days in case of temporary total incapacity, but if the incapacity be permanent the compensation begins on the day following the injury.

Medical aid is furnished by the employer for

eight weeks after the injury to the extent of two hundred dollars.

Total disability is compensated on the basis of 50 per cent. of the average weekly earnings, with a maximum of twelve dollars per week and a minimum of six dollars per week.

For permanent injuries the same rate prevails until the amount paid equals four times the average annual earnings or thirty-five hundred dollars, and thereafter an annual pension is allowed during life equal to eight per cent. of total previous payments with a minimum of ten dollars monthly.

If death results provision is made for the dependent widow and children according to the degree of the dependency, with a maximum allowance of thirty-five hundred dollars and a minimum of sixteen hundred and fifty dollars.

Payment of compensation may be settled by the parties or by an arbitrator designated by the Commission. All questions not otherwise settled are disposed of by the Commission.

Indiana.

Applies to all public and private employments, except casual, with the exception of farm laborers and domestic servants, but they may elect to come under the act.

Compensation begins on the fifteenth day after the injury.

The employer furnishes medical attendance for thirty days after the injury.

The compensation provided is 55 per cent. of the average weekly wages with a maximum of thirteen dollars and twenty cents per week and a minimum of five dollars and fifty cents per week; the maximum period is five hundred weeks and the maximum amount five thousand dollars.

If death results total dependency is provided for on the basis of 55 per cent. of the average weekly wages for the remainder of the period between the time of death and three hundred weeks following the injury; partial dependents are provided for upon the above basis according to the degree of dependency.

Compensation may be fixed by agreement subject to the approval of the Commission or by a member of the Commission upon application of either party. An award made by a member of the Board is subject to review by the full board upon application. The award of the Board is conclusive as to questions of fact but errors of law may be appealed to the appellate court for review.

Applies to all employments public or private—domestic servants and farm laborers are excepted. The act is compulsory as to public employments and elective as to private employments.

Compensation commences on the fifteenth day after the injury.

The employer furnishes medical aid to the extent of one hundred dollars.

For total disability 50 per cent. of the average weekly wages, with a maximum of ten dollars per week and a minimum of five dollars per week for a maximum period of four hundred weeks is allowed; partial disability has a maximum of three hundred weeks.

If death results total dependency is provided for on the basis of 50 per cent. of the average weekly earnings with a maximum of ten dollars per week and a minimum of five dollars per week, for a maximum period of three hundred weeks.

Compensation may be settled by agreement subject to the approval of the Commission or may be fixed by the Commission itself.

Maine.

Applies to all public and private employments—public officials, farm laborers and domestic servants excepted.

Is compulsory as to state, cities, and counties and elective as to private employers and towns.

Medical attendance is furnished by the employer for the first two weeks.

For total disability the allowance is 50 per cent. of the average weekly wages, with a maximum of ten dollars per week and a minimum of four dollars per week, for a maximum period of five hundred weeks, and a maximum amount of three

thousand dollars; for partial disability 50 per cent. of the average loss of earning power, with a maximum of three hundred weeks, is allowed.

In case of death dependents receive 50 per cent. of the average weekly wages, with a maximum of ten dollars per week and a minimum of four dollars per week for three hundred weeks after the injury.

MARYLAND.

Applies to certain hazardous employments enumerated in the act. Farm laborers, domestic servants, country blacksmiths, wheel-wrights and similar employments, and any employee receiving in excess of two thousand dollars a year as salary, are excepted.

Compensation commences at the end of the second week following the injury except in case of permanent total disability when the compensation commences after the first week.

Employers must furnish medical attendance to the extent required by the Commission, at a maximum expense of one hundred and fifty dollars.

Compensation for permanent disability is 50 per cent. of the average weekly wages, maximum twelve dollars, minimum five dollars, but the aggregate payments cannot exceed five thousand dollars. For partial disability 50 per cent. of the loss of earning capacity, maximum twelve dollars per week, is allowed, but the aggregate amount paid cannot exceed three thousand dollars.

In case of death dependents receive 50 per cent. of the average weekly wages, with a maximum of forty-two hundred and fifty dollars and a minimum of one thousand dollars.

Compensation disputes are settled by the Commission or by arbitrators appointed by the Commission.

Massachusetts.

Applies to all private employments and is elective.

Compensation commences at the end of the first ten days of disability.

Medical attendance is provided during the first two weeks or for a longer period in the discretion of the Accident Board.

The compensation allowed is 66 2-3 per cent. of the average weekly wages with a maximum of ten dollars per week and a minimum of four dollars per week. The maximum period is five hundred weeks; maximum amount four thousand dollars.

In case of partial disability 66 2-3 per cent. of the average loss of earning power, with the same limitations.

In case death results, dependents receive 66 2-3 per cent. of the average weekly wages, maximum ten dollars per week, minimum four dollars per week; maximum period five hundred weeks, and maximum amount four thousand dollars.

Compensation may be settled by agreement, subject to the approval of the Accident Board or by an

arbitration committee of three, the chairman of the committee being a member of the Board, but the action of such committee is subject to review by the Board. Other disputes are settled by the Board direct.

Michigan.

Applies to all public employments, except as to officials, and all private employments. Is elective as to private employments and compulsory as to state, counties, etc.

Compensation commences on the fifteenth day after disability but if the disability continues eight weeks compensation is payable from the date of the injury.

Employers must furnish reasonable medical aid when needed during the first three weeks after the injury.

For total disability the allowance is 50 per cent. of the average weekly wages, maximum ten dollars per week, minimum four dollars per week; maximum period five hundred weeks; maximum amount four thousand dollars.

For partial disability the maximum period is three hundred weeks. In case death results, dependents receive 50 per cent. of the average weekly wages, maximum ten dollars per week, minimum four dollars per week, for the remainder of the period between death and three hundred weeks after injury.

Compensation may be settled by agreement subject to the approval of the Commission or an arbitration committee presided over by a member of the Board. Otherwise the Board settles the dispute.

Minnesota.

Applies to all public and private employments—public officials, railroad employees, farm employees and domestic servants excepted. Is elective.

Compensation does not commence until after the first two weeks.

The employer must furnish medical aid for a period of not more than ninety days. At any time within one hundred days after the injury the court may require medical treatment to be furnished at a maximum expense of two hundred dollars.

Compensation provided is 50 per cent. of the weekly wages, maximum eleven dollars per week, minimum six dollars and fifty cents per week; maximum period three hundred weeks if the disability is temporary, and four hundred weeks if permanent. In certain cases where the injuries are very severe the compensation period is extended to five hundred and fifty weeks.

If death results, the compensation is based upon the number of the dependents and the degree of relationship, but the weekly payments are limited to a period of three hundred weeks.

Nebraska.

Covers all public employments—except as to officials—all private employments where five or more persons are employed regularly in the business, except farm labor, domestic service, outworkers and casual employments. Is elective.

Personal injuries by accident arising out of and in course of the employment, unless due to willful intent of the employee to injure himself, or intoxication.

Compensation begins on the fifteenth day, unless disability lasts eight weeks in which case compensation becomes payable from the date of the injury.

The employer furnishes medical attendance during the first twenty-one days of disability at a maximum expense of two hundred dollars.

Compensation for total disability is 50 per cent. of the wages during the first three hundred weeks, maximum ten dollars per week, and minimum five dollars per week. After three hundred weeks 40 per cent. of the weekly wages during life is allowed with a maximum of eight dollars and a minimum of four dollars. For partial disability 50 per cent. of the loss of earning power for a period of three hundred weeks is allowed. Special allowances are made for the loss of certain members of the body.

If death results, total dependency is provided for on the basis of 50 per cent. of the weekly wages, maximum ten dollars per week and minimum five

dollars per week, for a maximum period of three hundred weeks.

Nevada.

Covers all public and private employments except domestic service, stock or poultry raising and farm labor.

Elective as to private employments but compulsory as to state, counties, etc.

Personal injuries by accident arising out of and in course of the employment, unless due to willful intention on part of the employee to injure himself or injuries sustained while intoxicated.

No compensation is paid for incapacity lasting less than five days. If the incapacity extends beyond seven days compensation begins on the eighth day after the injury. If it continues for two weeks or longer compensation is allowed from the date of the injury.

The employer must furnish such medical, surgical or hospital service as may be reasonably required for a period of four months.

The compensation allowance for total disability is 50 per cent. of the average monthly wages with a maximum of sixty dollars and a minimum of twenty dollars for a maximum period of one hundred months, and a maximum amount of five thousand dollars. For partial disability 50 per cent. of the wage loss is allowed for a maximum period of sixty months.

Total dependency is provided for on the basis of 40 to 60 per cent. of the average monthly wages with a maximum amount of four thousand, five thousand or six thousand dollars, according to the condition of the dependents.

Where there are any surviving children those under sixteen years of age receive monthly payments of from ten dollars to thirty-five dollars, the amount and period of the payments being under the control of the Commission. The Commission has full control of the matter of compensation settlements.

New Hampshire.

Covers all employments hazardous to the life or limb of the employee. Is elective.

Any injury arising out of and in course of the employment, unless due to intentional violation of law, or willful misconduct.

Compensation commences after the first two weeks of disability.

For total disability 50 per cent. of the average weekly wage is allowed, maximum ten dollars per week, with a maximum period of three hundred weeks. Partial disability, 50 per cent. of average loss of earning power with a maximum of ten dollars per week and a maximum period of three hundred weeks.

In case death results, dependents receive one hundred and fifty times the average weekly earn-

ings, less any disability payments made, with a maximum of three thousand dollars.

New Jersey.

Covers all private employments, except casual, and all public employments, except as to elective officials or those receiving a salary in excess of twelve hundred dollars a year. Elective as to private employments but compulsory as to state, counties, etc.

Personal injuries by accident arising out of and in course of the employment except when intentionally inflicted, or when intoxicated.

Compensation begins the fifteenth day after the injury.

If death results from the injury, provision is made for the dependent widow during her life or until re-marriage and provision is also made for dependent children under the age of eighteen years.

The Commission has full control of settlement agreements.

Ohio.

Applies to all employments, except as to officials, and policemen or firemen in localities maintaining a pension fund; applies also to all private employments where five or more persons are regularly employed. Is compulsory.

Personal injuries sustained in the course of the employment, unless intentionally self-inflicted.

Compensation commences from the first week after the injury.

Medical attendance may be ordered furnished by the Commission in its discretion at a maximum cost to the employer of two hundred dollars.

The compensation allowed is 66 2-3 per cent. of the average weekly wages, maximum twelve dollars per week, minimum five dollars per week; maximum period six years; maximum amount thirty-seven hundred and fifty dollars, except that if the disability be permanent compensation continues until death upon the above basis. For partial disability the allowance is 66 2-3 per cent. of the loss of earning power, maximum twelve dollars per week, and maximum amount thirty-seven hundred and fifty dollars. For loss of certain members of the body special allowances are made.

If the injury causes death within two years dependents receive 66 2-3 per cent. of the average weekly wages for the remainder of the period between date of death and six years after the date of the injury with a maximum of thirty-seven hundred and fifty dollars and a minimum of fifteen hundred dollars.

Compensation settlements are under the entire control of the Commission.

Pennsylvania.

Applies to all public and private employments, except domestic servants, farm labor, and casual

employments. Elective as to private employments but compulsory as to state, counties, etc.

Injuries sustained by accident in course of the employment and such disease or infection as naturally results therefrom, unless willfully self-inflicted.

Compensation commences after fourteen days of disability.

Employer furnishes necessary medical attendance during the first fourteen days, maximum expense twenty-five dollars, but if an operation be necessary seventy-five dollars is allowed.

The compensation allowed is 50 per cent. of the average weekly wages, maximum ten dollars per week, minimum five dollars per week; maximum period five hundred weeks, maximum amount four thousand dollars. Partial disability is compensated for on the same percentage basis with a maximum period of three hundred weeks. Special provision is made for loss of certain members of the body.

If death results from the injuries, dependents receive from fifteen to sixty per cent. of the weekly wages according to the number of dependents and the relationship, with a maximum of twenty dollars per week and a minimum of ten dollars per week; maximum period three hundred weeks.

Rhode Island.

Applies to all private employments where more than five are regularly employed—except domestic servants, farm laborers and employees receiving a

yearly salary in excess of eighteen hundred dollars. Employers having five or less employees may elect to come under the act.

Personal injuries by accident arising out of and in course of the employment, unless due to willful intent on part of the employee to injure himself or another, or to intoxication while on duty.

Compensation begins on the fifteenth day after the injury.

Employers must furnish reasonable medical service when needed during the first two weeks.

The compensation allowance is 50 per cent. of the average weekly wages, maximum ten dollars per week, minimum four dollars per week, maximum period five hundred weeks. For partial disability the allowance is 50 per cent. of the average wage loss, maximum ten dollars per week, maximum period three hundred weeks. Special allowance is made for loss of certain members of the body in addition to other compensation.

In case death results dependents receive 50 per cent. of the average weekly wages, maximum ten dollars per week, minimum four dollars per week; maximum period three hundred weeks.

Compensation may be settled by agreement between the parties subject to the approval of the Superior Court; if the parties cannot agree a petition may be filed in the Superior Court for the determination of the matter.

Texas.

Applies to all employments except domestic servants, farm labor, railways, cotton gin workers or employments with less than five employees. Elective.

Personal injuries sustained in the course of the employment.

Compensation begins on the eighth day after the injury.

Medical attendance must be furnished during the first week after the injury.

Compensation is 60 per cent. of the average weekly earnings, maximum fifteen dollars per week, minimum five dollars per week; maximum period four hundred weeks; the partial disability allowance is 60 per cent. of the average loss of earning power, maximum fifteen dollars per week, maximum period three hundred weeks. For loss of certain members of the body special allowance is made in addition to compensation.

For death 60 per cent. of the average weekly earnings, maximum fifteen dollars per week, minimum five dollars per week, maximum period three hundred and sixty weeks, to be distributed according to the law governing the distribution of property of deceased persons.

Compensation settlements may be made by agreement of the parties or by the Commission.

VERMONT.

Applies to public and private employments, except public officials, domestic servants or employees receiving a salary in excess of fifteen hundred dollars a year. Elective.

Personal injuries arising out of and in course of the employment, unless caused by the employee's willful intention to injure himself or another, or by intoxication or failure to use the safety appliances provided.

Compensation commences on the fifteenth day of the disability.

During the first fourteen days the employer must furnish reasonable medical service at a maximum expense of seventy-five dollars.

The compensation allowed is 50 per cent. of the average weekly wages, maximum twelve dollars and fifty cents per week, minimum three dollars per week; maximum period two hundred and sixty weeks. For partial disability the allowance is 50 per cent. of the average loss of earning power, maximum ten dollars per week, maximum period five years. For loss of certain members of the body special provision is made. Inability to obtain employment owing to disfigurement may be considered partial disability.

In case death results, the allowance is 15 to 45 per cent. of the average weekly wages, according to the degree of dependency and the number and relationship of dependents. The maximum amount

is thirty-five hundred dollars and the maximum period is two hundred and sixty weeks in case of close dependents, otherwise two hundred and eight weeks.

Wisconsin.

Applies to public employments except as to officials, and all private employments except as to steam railroads engaged in the business of common carriers, and also casual employments. Elective as to private employments, compulsory as to state, counties, etc.

Personal injuries sustained in performing service growing out of the employment, unless intentionally self-inflicted.

Compensation begins on the eighth day after the disability but if the disability lasts more than four weeks compensation is payable from the first day.

Medical attendance must be furnished by the employer for a maximum period of ninety days. The Commission is authorized to pass upon the reasonableness of the charges of the physician.

The compensation allowed for total disability is 65 per cent. of the average weekly earnings during disability; maximum period fifteen years. If a nurse is required the rate may be increased to 100 per cent. after the first ninety days, but the aggregate indemnity for a single accident is subject to a maximum of six times the average annual earnings

if permanent, or four times average annual earnings if temporary.

The partial disability allowance is 65 per cent. of the wage loss, with a maximum of four times the average annual earnings, maximum period fifteen years. For loss of certain members of the body special provision is made.

If death results dependents are entitled to four times the average annual earnings, with a maximum of six times the average annual earnings, inclusive of disability payments.

Compensation may be settled by agreement subject to the supervision of the Commission or by the Commission upon application of either party.

United States.

Applies to all civil employees in the United States and the Panama Railroad Company. Compulsory.

Personal injuries sustained in performance of duty, unless caused by willful misconduct or by intentional self-injury, or by intoxication.

Compensation commences on the fourth day of disability.

Medical treatment is furnished for a reasonable length of time after the injury.

The compensation allowed for total disability is 66 2-3 per cent. of the monthly payments with a maximum of sixty-six dollars and sixty-seven cents per month and a minimum of thirty-three dollars and thirty-three cents per month. Compensation

continues during the entire period of disability. For partial disability 66 2-3 per cent. of loss of earning power is allowed with a maximum of sixty-six dollars and sixty-six cents per month. If the employee be partially disabled and declines a suitable position offered him by the Commission his compensation ceases.

In case the injury results fatally within six years compensation equal to from 10 per cent. to 66 2-3 per cent. of the monthly wages is paid according to the number and relationship of the dependents and the degree of dependency, the monthly earning being computed upon the basis of a maximum of one hundred dollars per month and a minimum of fifty dollars per month. Compensation to the widow continues until her death or re-marriage. Children are allowed compensation until they reach the age of eighteen years or if they are over that age and incapable of supporting themselves the compensation continues until they become self-supporting.

All compensation matters are under the control and supervision of the Commission.

APPENDIX B

Changes in the Rhode Island Act Effective June First, Nineteen Hundred and Seventeen.

Since the foregoing was written the legislature of the State of Rhode Island has passed an act, in amendment of, and in addition to the present Workmen's Compensation Act of the state.

The new legislation changes the present law in the following respects: (a) If total incapacity extends beyond a period of four weeks, compensation commences from the date of injury.

(b) During the first four weeks after the injury the employer is required to furnish reasonable medical and hospital services and medicines when necessary.

(c) The employee has the right to select the physician by whom, or the hospital in which he desires to be treated and the employer is required to pay the reasonable charges of the physician or hospital so selected.

(d) The physician is required to give written notice to the employer within seven days from the time he commences to treat the employee and must

also present his claim to the employer for the services he has rendered, within three months from the date of the termination thereof.

(e) A wife who is living apart from her husband for a justifiable cause or because he has deserted her, is deemed to be a dependent.

(f) The law is extended to cover state employees receiving eighteen hundred dollars ($1800) or less per year.

(g) Any city or town in the state may accept the act if it elects so to do and in case of such acceptance said city or town is allowed to designate the class of employees to receive compensation. Regularly organized police and fire departments of any city or town are expressly excluded from the operation of the act.

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